ORIGINAL NEW APPLICATION

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AZ CORP COMMISSION
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eschelon telecom, inc.

July 6, 2006

Via FedEx Overnight Express Mail

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

T-03432A-06-0451

RE: In the Matter of the Merger of Mountain Telecommunications, Inc. and Eschelon Telecom, Inc.
Docket No. T-03432A-06-_____

Dear Sir/Madam:

Enclosed for filing in connection with the above-referenced matter is an original and 13 copies of an Application for Waiver of Rule 14-2-803 of the Public Utility Holding Companies and Affiliated Interests Rules and Joint Notice of Intent to Transfer Control.

Sincerely,

Kim K. Wagner

Kim K. Wagner
Senior Legal Secretary
Eschelon Telecom, Inc.
(612) 436-6225 (direct)
(612) 436-6816 (fax)

Enclosures

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
JEFF HATCH–MILLER – Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE MERGER OF MOUNTAIN TELECOMMUNICATIONS, INC. AND ESCHELON TELECOM, INC.	))))	DOCKET NO. T-03432A-06- _____

APPLICATION FOR WAIVER OF RULE 14-2-803 OF THE PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS RULES AND JOINT NOTICE OF INTENT TO TRANSFER CONTROL

Mountain Telecommunications of Arizona, Inc., (MTI-AZ), an Arizona corporation and Eschelon Telecom, Inc. (Eschelon), a Delaware corporation, by and through the undersigned, and pursuant to A.A.C. R14-2-803, jointly submit an Application for Waiver of Rule 14-2-803 of the rules of the Arizona Corporation Commission (Commission) and Notice of Intent to Transfer Control (Notice of Intent) to the Arizona Corporation Commission Utilities Division (Commission Staff), as follows:

I. INTRODUCTION

Subject to the regulatory approval requested herein, Mountain Telecom, Inc., a Delaware corporation (MTI-DE) and Eschelon Telecom, Inc., (ETI) a Delaware corporation, intend to consummate an Agreement and Plan of Merger (Agreement).[1]

[1] On July 6, 2006, the parties filed an application with the Federal Communications Commission for consent to the transfer of control of MTI's Section 214 authorizations to ETI. In

Pursuant to the Agreement, Mountain Acquisition Corp., a newly created subsidiary of Eschelon Operating Company (OPCO) will be merged with and into MTI-DE. As a result of the merger, the separate corporate existence of Mountain Acquisition Corp. shall cease and MTI-DE will continue as the surviving corporation of the merger as a wholly owned subsidiary of OPCO, which is a wholly owned subsidiary of ETI. MTI-AZ, an Arizona public service corporation and a wholly-owned subsidiary of MTI-DE will remain a wholly-owned subsidiary of MTI-DE. Thus, upon completion of the transaction, ETI will be the ultimate parent company for MTI-AZ. ETI is currently the parent company of Eschelon Telecom of Arizona, Inc., which was granted a Certificate of Convenience and Necessity to provide facilities-based and resold interstate telecommunications services in Arizona in Decision No. 62751 on July 25, 2000.

Pursuant to A.A.C. R14-2-806, the parties request a waiver of the requirement to comply with A.A.C. R14-2-803 in regard to this transaction. On April 17, 2002, in Docket No. T-03406A-01-0404, Eschelon Telecom of Arizona, Inc. was granted a limited waiver of the Commission's Affiliated Interest Rules, including A.A.C. R14-2-803, which provided that it shall only be required to comply with that rule for "any proposed organization or reorganization, transaction, or diversification plan that could directly or indirectly result in or cause an increase in its maximum rate on file with the Commission for any competitive service." This transaction will not directly or indirectly result in or cause an increase in the maximum rate on file for MTI-AZ or Eschelon Telecom of

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accordance with the FCC's processing procedures, the parties anticipate FCC approval not later than August 20, 2006.

Arizona, Inc. The parties request that the Commission likewise waive the requirements of the rule for MTI-AZ. In the alternative the parties request that the Commission approve the proposed transaction without a hearing.

The Parties.

MTI-AZ is an Arizona public service corporation, with its principal place of business in Tempe, Arizona. MTI-AZ is a wholly-owned subsidiary of MTI-DE, a Delaware corporation. On February 9, 1998, in Decision No. 60668, the Commission granted a Certificate of Convenience and Necessity to MTI-AZ, authorizing it to provide facilities-based and resold local exchange and long distance telecommunications services in Arizona. MTI-AZ is a Class A investor-owned public service corporation and therefore a "Utility" under A.C.C. R14-2-801(8).

ETI is a Delaware corporation, with its principal place of business in Minneapolis, Minnesota. ETI's wholly-owned subsidiary, Eschelon Telecom of Arizona, is a utility currently certified to provide telecommunications services in Arizona. Upon completion of the proposed transaction, MTI-DE and MTI-AZ will operate in Arizona as wholly-owned subsidiaries of ETI. ETI will qualify as an Affiliate and Public Utility Holding Company as defined in A.A.C. R14-2-801.

As a part of the transactions, ETI will purchase all of the stock of MTI-DE with cash. Thus after completion of the transaction, the capital structure of MTI-AZ will have the same assets but less debt than before the transaction. A chart depicting the parties before and after the merger is attached hereto as Exhibit 1 and incorporated herein.

II. CRITERIA UNDER A.A.C. R14-2-803

A. Names and Business Address of the Proposed Officers and Directors of the Holding Company.

The officers and directors of ETI are:

Cliff D. Williams
Founder and Chairman, Director
730 Second Avenue S., Suite 900
Minneapolis, MN 55402

Richard A. Smith
CEO and President, Director
730 Second Avenue S., Suite 900
Minneapolis, MN 55402

Geoffrey M. Boyd
Chief Financial Officer
730 Second Avenue S., Suite 900
Minneapolis, MN 55402

Marvin C. Moses
Director
P. O. Box 6506
Snowmass Village, CO 81615

Ian K. Loring
Director
600 Montgomery Street, 33rd Floor
San Francisco, CA 94111

Mark E. Nunnelly
Director
111 Huntington Avenue, Suite 3500
Boston, MA 02199

James P. TenBroek
Director
One Towne Square, Suite 780
Southfield, MI 48076

Louis L. Massaro
Director
19 Mile Post Lane
Pittsford, NY 14534

J. Jeffery Oxley
EVP, General Counsel & Secretary
730 Second Avenue S., Suite 900
Minneapolis, MN 55402

Dennis D. Ahlers
Associate General Counsel, Assistant Secretary
730 Second Avenue S., Suite 900
Minneapolis, MN 55402

The business address for ETI's officers is 730 Second Avenue South, Suite 900, Minneapolis, MN. 55402.

B. The Business Purposes for Establishing or Reorganizing the Holding Company.

The establishment of ETI as a holding company of MTI-AZ arises out of a transaction pursuant to which ETI would acquire the stock of MTI-DE and its subsidiary MTI-AZ. ETI's subsidiary, Eschelon Telecom of Arizona, Inc. already provides

telecommunications services in Arizona. ETI has several other subsidiaries that provide telecommunications services in other states. The holding company structure provides for each company to be operated and to report to the parent company as a separate distinct organization. The holding company structure provides ETI the opportunity to operate in Arizona and in other states through separate subsidiaries while preserving the current Arizona operations of MTI-AZ and its other Arizona subsidiaries as stand-alone companies with their own assets and capital structure, subject to the oversight of the Commission.

C. The Proposed Method of Financing the Holding Company and the Resultant Capital Structure.

1. Financing of the Holding Company.

ETI is an existing publicly-traded company. Its method of financing will not change as a result of this transaction.

2. Resultant Capital Structure of the Holding Company.

Mountain Acquisition Corp., a subsidiary of OPCO which is a subsidiary of ETI will merge with and into MTI-DE, with MTI-DE being the surviving corporation of the merger. The separate legal existence of Mountain Acquisition Corp. will cease at the time of the merger and MTI-DE and its subsidiary MTI-AZ will be subsidiaries of OPCO which will continue to be wholly owned by ETI. Thus, upon completion of the transaction ETI will own all of the Capital Stock of MTI-AZ. ETI will purchase MTI-DE with cash, thereby reducing MTI-AZ's debt and ETI's equity.

D. The Resultant Effect on the Capital Structure of the Public Utility.

As a result of the merger, MTI-AZ's debt will be eliminated and it will have the same assets as before the merger. The utility will also be strengthened through the potential access of capital at the parent level, with interest rates that are expected to be better than at the utility level.

E. An Organization Chart of the Holding Company that Identifies all Affiliates and their Relationships within the Holding Company's Subsidiaries.

Organizational charts for ETI and its affiliates are attached hereto as Exhibit 2 and incorporated herein.

F. The Proposed Method for Allocating Federal and State Income Taxes to the Holding Company's Subsidiaries.

ETI will allocate federal and state tax liabilities or credits based upon their respective contributions of net income or net loss to the consolidated net income or net loss as reflected on the parent company's consolidated income tax return for each taxable year.

G. The Anticipated Changes in the Utility's Cost of Service and the Cost of Capital Attributable to the Reorganization.

The merger will not have a negative impact on the cost of service for MTI-AZ. The cost of capital will be impacted positively by an enhanced ability to raise capital at the parent level.

H. A Description of Diversification Plans of Affiliates of the Holding Company.

ETI's affiliates do not have any plans to diversify at this time.

I. Copies of all Relevant Documents and Filings with the United States Securities and Exchange Commission and other Federal and State Agencies.

Attached is a copy of the Joint Application for Consent to Transfer of Control, filed with the FCC on July 6, 2006; Form 10-K for ETI, filed with the Securities and Exchange Commission and the Agreement and Plan of Merger.

J. Contemplated Annual and Cumulative Investment in the Affiliate for the Next Five Years in Dollars and as a Percentage of Projected Net Utility Plant

ETI's investment in its affiliates will be as needed to continue to provide quality telecommunications services to their customers. ETI has no plans to invest in any unregulated or non-communications related subsidiaries.

K. An Explanation of the Manner in Which the Utility Can Assure That Adequate Capital Will be Available for the Construction of Necessary New Utility Plant and for Improvements in Existing Utility Plant

MTI-AZ will continue to fund a substantial portion of it capital expenditure needs with internally generated funds. The reorganization positions MTI-AZ to take advantage of the financial strength and other resources of ETI for any additional capital needs. To the extent that additional funds are needed, access to funds will likely be more readily available at a lower cost than would be available to the utility under present circumstances.

III. REQUEST FOR WAIVER OF HOLDING COMPANY RULE.

The parties request a waiver of A.C.C. R14-2-803 for purposes of this transaction. A waiver of the rule is in the public interest because MTI-AZ will continue to provide the

same certified services in Arizona under the same terms and conditions after the completion of the transaction as it presently does. No Arizona customers, assets or certificates will be transferred from MTI-AZ. The contracts of current MTI-AZ customers will remain in effect. The number of Arizona employees will not be reduced as a result of the transaction. The level of investment in Arizona operations is not expected to change as a result of this transaction. None of the steps involved in this transaction should result in increased costs or service impacts to Arizona customers.

ETI, the proposed parent company of MTI-AZ, is almost exclusively focused on communications and information services and equipment. It has no plans to enter other lines of business. MTI-AZ operates in a highly competitive environment that, along with the Commission's existing regulatory mechanisms, effectively protects customers from cross-subsidization or other activities that could detrimentally affect service to its customers. Thus MIT-AZ will have no ability or incentive to charge above-market prices that could be used to fund unregulated activities or affiliates or otherwise use utility funds for purposes harmful to Arizona telecommunications consumers. This transaction will allow MTI-AZ to compete more effectively with Qwest and with its other CLEC competitors and to provide the highest quality service to its customers in Arizona. The transaction will have no negative effects on MTI-AZ or its customers and is likely to have positive effects. Therefore, a waiver of A.C.C. R14-2-803 is in the public interest.

IV. CONCLUSION

The acquisition of MTI-AZ's parent company, MTI-DE, by ETI will not result in any change in existing Arizona utility operations. MTI-AZ will remain a subsidiary of MTI-

DE, which in turn will be a subsidiary of ETI. MTI-AZ will continue to operate under the regulatory oversight of the Commission, in the same manner and under the same name, as it currently operates. The Applicants believe that a hearing in this matter is not necessary. Therefore, the Joint Applicants respectfully request that the Commission waive the requirements of A.C.C. R14-2-803 or in the alternative approve the merger without a hearing.

Respectfully submitted,

Dated: July 6, 2006

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Eschelon Telecom, Inc.
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Facsimile: (612) 436-6816
E-mail: camurray@eschelon.com

DE, which in turn will be a subsidiary of ETI. MTI-AZ will continue to operate under the regulatory oversight of the Commission, in the same manner and under the same name, as it currently operates. The Applicants believe that a hearing in this matter is not necessary. Therefore, the Joint Applicants respectfully request that the Commission waive the requirements of A.C.C. R14-2-803 or in the alternative approve the merger without a hearing.

Respectfully submitted,

Dated: July 6, 2006

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MTI Pre-Merger

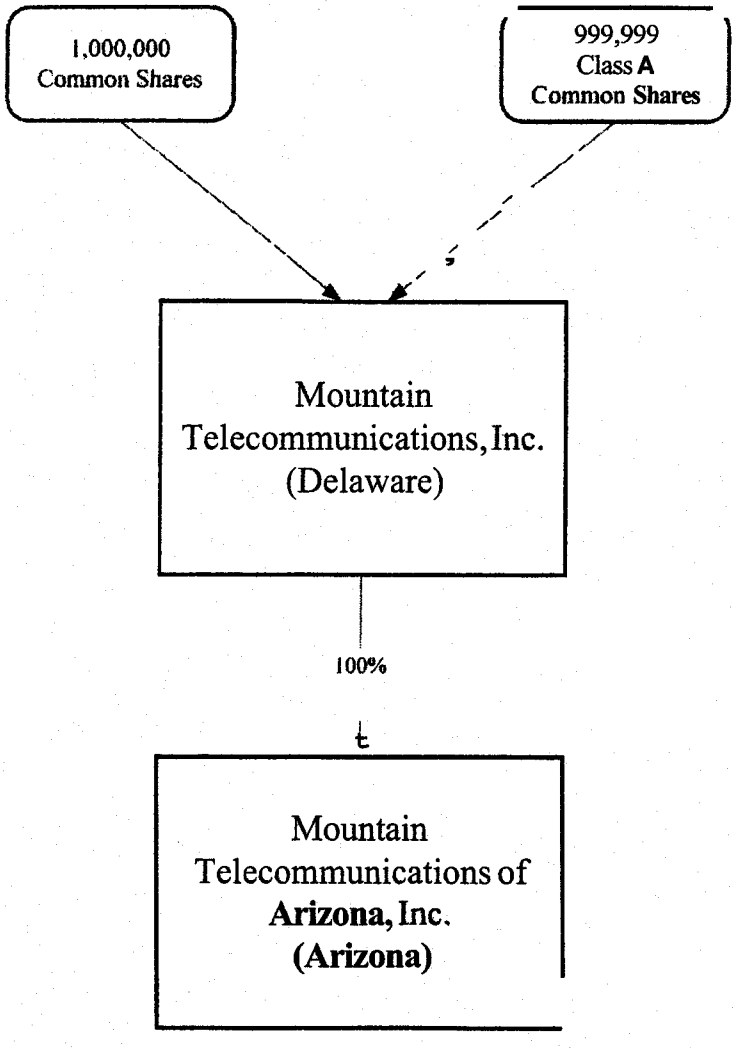
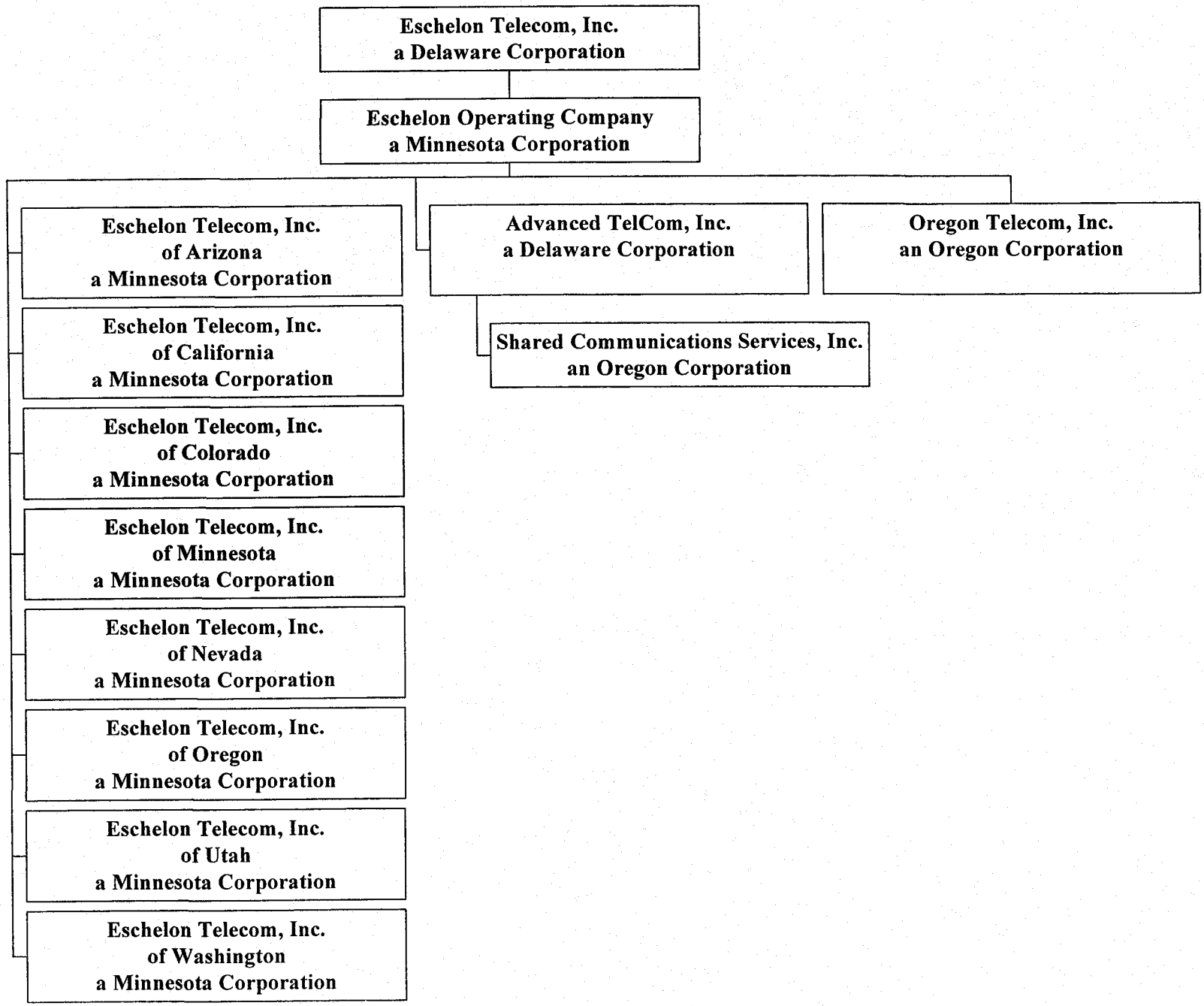


Exhibit 1



ETI Pre-Merger

POST-MERGER

Exhibit 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
MOUNTAIN TELECOMMUNICATIONS, INC.	)	**File No. ITC-T/C-2006_____**
Transferor,	)	
ESCHELON TELECOM, INC.	)	
Transferee,	)	**WC Docket No. 06-_____**
Joint Application for Consent to a Transfer Pursuant to Section 214 of the Communications Act of 1934, as Amended	)	

JOINT INTERNATIONAL AND DOMESTIC APPLICATION FOR STREAMLINED CONSENT TO TRANFER CONTROL

Pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"),[1] and Sections 63.04 and 63.24 of the Commission's rules,[2] this Joint Application seeks the consent of the Federal Communications Commission for the proposed transfer of ultimate control of Mountain Telecommunications, Inc., (MTI) a Delaware corporation, and parent company of Mountain Telecommunications of Arizona (MTA)[3], to Eschelon Telecom, Inc. (ETI). ETI and MTI are non-dominant carriers authorized by the Commission to provide

1 47 U.S.C. § 214.

2 47 C.F.R. §§ 63.04(b), 63.24(e).

3 References herein to MTI include MTA.

international[4] and domestic telecommunications services. A Domestic Supplement, containing the information required by 47 C.F.R. § 63.04, is attached hereto as Exhibit A.

Applicants seek streamlined processing of this Joint International and Domestic Application pursuant to Sections 63.03 and 63.12 of the Commission's Rules.[5] This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i), because (a) after the proposed transaction, ETI and its affiliates combined; 1) will have less than 10 percent market share in the interstate, interexchange market, and 2) will provide competitive services exclusively in areas served by dominant local carriers that are not parties to the transaction, and (3) none of the Applicants are currently dominant with respect to any domestic service, and will not become dominant with respect to any domestic service after consummation of the proposed transaction. This Application also qualifies for streamlined treatment under Section 63.12 because (a) none of the Applicants is affiliated with a dominant foreign carrier and (b) none of the Applicants will become affiliated with any foreign carrier as a result of the proposed transaction, and (c) none of the other provisions contained in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12, apply.

In support of this Application, Applicants submit the following information:

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[4] ETI provides international telecommunications services pursuant to International Section 214 authorization granted by the Commission in File No. ITC-214-19990729-00490 on August 27, 1999. MTI provides international telecommunications services pursuant to International Section 214 authorization granted by the Commission in File No. ITC-214-19980126-00036 on March 13, 1998. ETI and MTI are referred to collectively as the "Applicants."

[5] 47 C.F.R. §§ 63.03 and 63.12.

I. APPLICANTS

(a) Mountain Telecommunications, Inc. (FRN 0004351391)

Mountain Telecommunications, Inc. is a privately owned corporation organized under the laws of the state of Delaware. MTI is located at 1430 W. Broadway, Suite 206, Tempe, Arizona, 85282. MTI is the parent corporation of Mountain Telecommunications of Arizona, a direct wholly-owned subsidiary of MTI, which is authorized to provide telecommunications services in the state of Arizona, where, it provides resold local and long distance voice, and data transmission services to small and medium-sized businesses.

MTI holds Section 214 authorizations from the Federal Communications Commission to provide domestic and international resold telecommunications services.[6] MTI is considered a non-dominant carrier under the Commission's Rules. The company has no affiliation, within the meaning of Section 63.09(e) of the Commission's Rules, 47 C.F.R. § 63.09(e), with a dominant U.S. or foreign facilities-based carrier.

(b) ESCHELON TELECOM, INC. (FRN #0010289114)

Eschelon Telecom, Inc. (ETI) is a corporation organized under the laws of the state of Delaware. ETI's principal place of business is located at 730 2nd Avenue South, Suite 900, Minneapolis, Minnesota 55402. Mountain Acquisition Corp., a Delaware corporation, is a direct, wholly-owned subsidiary of Eschelon Operating Company ("OPCO"), a Minnesota corporation that functions as a holding company, which in turn is a direct, wholly-owned subsidiary of ETI, the ultimate parent corporation. ETI is authorized to provide telecommunications services in California, Idaho, New Mexico and New York; however, ETI

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6 *See* Footnote 3, *supra*.

only provides service, specifically long distance resale service, to one business customer in New York. OPCO has several direct, wholly owned subsidiaries that offer telecommunications services in various states.[7] In these states, the subsidiaries provide resold and facilities-based local, resold long distance, and data transmission services to small and medium sized-businesses. ETI and its subsidiaries, collectively "Eschelon," are headquartered at the above address, provide voice, data transmission services, and business telephone systems to over 55,000 customers, and have over 428,000 access lines in service.[8] Eschelon owns switches in all states where it offers local services. The average Eschelon customer has 5 to 8 lines. Eschelon provides local and long distance facilities-based service in 19 markets in 8 states. There are no other affiliates of ETI that offer domestic telecommunications services.

As a part of the proposed transaction, a newly created subsidiary of OPCO, Mountain Acquisition Corp., will be merged with and into MTI. As a result of the merger, the separate corporate existence of Mountain Acquisition Corp. shall cease and MTI will continue as the surviving corporation of the merger as a wholly-owned subsidiary of Eschelon Operating Company (OPCO), which is a wholly-owned subsidiary of ETI. Thus, ETI will be the ultimate parent company for MTI after consummation of the transactions contemplated by the Agreement.

As permitted by Section 63.21 of the Commission's Rules, 47 C.F.R. § 63.21, ETI's subsidiaries currently provide resold international switched telecommunications services pursuant to the parent company, ETI's, international Section 214 authorization.[9]

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[7] Advanced TelCom, Inc., Eschelon Telecom of Arizona, Inc., Eschelon Telecom of Colorado, Inc., Eschelon Telecom of Minnesota, Inc., Eschelon Telecom of Nevada, Inc., Eschelon Telecom of Oregon, Inc., Eschelon Telecom of Utah, Inc., Eschelon Telecom of Washington, Inc. and Oregon Telecom, Inc.

[8] Eschelon defines "access lines" as 64bps channels.

[9] *See* Footnote 3, supra.

II. DESCRIPTION OF THE TRANSACTION

On June 30, 2006, ETI and MTI entered into an Agreement and Plan of Merger ("Agreement") providing for the merger of MTI and Mountain Acquisition Corp., a Delaware corporation and a direct wholly-owned subsidiary of OPCO. Pursuant to the terms of the Agreement, Mountain Acquisition Corp. will be merged into MTI, with MTI to be the surviving corporation of the merger ("the Transaction"). As a result of the merger, the separate corporate existence of Mountain Acquisition Corp. will cease and MTI shall continue as the surviving corporation of the merger as a wholly-owned subsidiary of OPCO. Thus, following the completion of the Transaction, MTI will be wholly owned by OPCO, which will continue to be wholly owned by ETI. Closing of the Transaction is contingent upon, among other things, receipt of necessary regulatory approvals from the Commission and other governmental approvals.

Applicants emphasize that the proposed Transaction will be entirely transparent to customers of MTI. Because of the nature of this merger, the transfer of control will not result in a change of carrier for any MTI customers. Immediately after consummating the transaction, MTI, through MTA, will continue to provide the identical end user telecommunications services and other services at the rates and pursuant to the terms and conditions of service these customers currently receive from MTI. Any future changes in the rates, terms and conditions of service will be made consistent with applicable law. Further, MTI will continue to provide services under the MTI name. The Transaction is not expected to result in any discontinuance of service for the MTI customers. In sum, the consummation of the Transaction will result in no perceivable changes to MTI's customers at that time.

III. PUBLIC INTEREST

The Applicants respectfully submit that the Transaction serves the public interest. After consummation of the Transaction, MTI will continue to operate under its name and operating authorities as at present. The Transaction involves no change in the entity providing service directly to customers or the end user services, rates, terms and conditions of such services. All existing retail tariffs will remain in place. The transfer of control will be entirely transparent to MTI customers and will not have any adverse impact on them. The only change will be in the ultimate ownership of MTI.

The Applicants expect that the Transaction will increase competition in the telecommunications market by strengthening ETI's position as an effective and multifaceted telecommunications carrier. The Transaction will allow ETI to combine its financial, technical and market resources and expertise with that of MTI, thereby enhancing its ability to provide reliable, competitively-priced services to customers. By permitting ETI to strengthen its competitive position, the proposed Transaction will make ETI a more financially secure competitive alternative to the incumbents and promote ETI's ability to enter additional markets, thus expanding competitive choices for customers.

MTI focuses on delivering reliable, high-quality voice and data transmission services to the medium and large business markets. Customers currently served by MTI fall squarely within ETI's market niche and therefore make an ideal fit with ETI's long-term expansion goals. Consummation of the proposed Transaction will make available to MTI customers ETI's innovative and proprietary operations support systems, which provide leading edge electronic bonding, provisioning, customer care and billing system capabilities. ETI is committed to exceeding customer expectations and understands that service and support are just as important

as having the latest technology at competitive prices. That is why ETI supports its products and services with dedicated and skilled account teams. MTI customers can expect the same dedicated attention if the proposed Transaction is consummated.

The transfer of control of MTI to ETI does not result in any anti-competitive effects. MTI and ETI together will achieve economies of scale and scope, which will enhance ETI's ability to deploy new products and services and expand into new markets. Although MTI and ETI both provide services in Arizona, the combined market share post-closing will not exceed 10 percent of the interstate, interexchange market. In all instances where MTI and ETI provide local exchange services, the incumbent local exchange carrier has a virtual monopoly and this Transaction will not diminish the ILEC's dominant market position. Furthermore, other competitive carriers such as Time Warner Telecom, XO Communications, Integra and a plethora of others are active participants in this market. Accordingly, the transfer of control of MTI to ETI will increase, not degrade, the competitiveness of these markets.

For each of the foregoing reasons, grant of the proposed transaction is in the public interest.

IV. INFORMATION REQUIRED BY SECTION 63.24(e) OF THE RULES

As required by Section 63.24(e) (2) of the Commission's Rules, Applicant submits the following information:

(a) Names, addresses and telephone numbers of Applicants:

Transferee

Eschelon Telecom, Inc.,
730 2nd Avenue South, Suite 900
Minneapolis, MN 55402
Telephone: (612) 376-4400

Transferor

Mountain Telecommunications, Inc.
1430 W. Broadway, Suite 206
Tempe, AZ 85282
Telephone: (480) 850-7585

(b) The Government, State, or Territory under the laws of which each of the Applicants is organized:

Applicant	**State of Organization**
Eschelon Telecom, Inc.,	Delaware
Mountain Telecommunications, Inc.	Delaware

(c) Correspondence concerning this Application should be addressed to:

Dennis D. Ahlers
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 900
Minneapolis, MN 55402
Telephone: (612) 436-6249
Facsimile: (612) 436-6349
E-mail: ddahlers@eschelon.com

Mountain Telecommunications, Inc.
Scott K. Weiss
Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, AZ 85016
(602) 445-8318
(602) 445-8632 fax
weisssk@gtlaw.com

With a copy to:

J. Jeffery Oxley
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 900
Minneapolis, MN 55402
Telephone: (612) 436-6692
Facsimile: (612) 436-6792
E-mail: jjoxley@eschelon.com

(d) Statement as to previous Section 214 authorization:

ETI received its international authorization to provide resale telecommunications services on August 27, 1999 in ITC-214-19990729-00490, then known as Advanced Telecommunications, Inc. On May 2, 2000, the Commission received a letter notice advising it of a change in name from Advanced Telecommunications, Inc. to Eschelon Telecom, Inc. ETI's subsidiaries provide interstate and international service pursuant to their parent's Section 214 authorization. MTI received its international authorization to provide resale services on March 13, 1998 in File No. ITC-214-19980126-00036.

(e) Not applicable.

(f) Not applicable.

(g) Not applicable.

(h) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the Applicant, and the percentage of equity owned by each of the entities:

Upon consummation of the Transaction, MTI will become a wholly-owned subsidiary of OPCO, which in turn is the wholly-owned subsidiary of ETI. Thus, ETI will be the new ultimate parent corporation and indirectly own 100% of the equity interest in MTI. ETI is a Delaware corporation with its principal offices located at 730 2nd Avenue South, Suite 900, Minneapolis, Minnesota 55402. OPCO is a Minnesota Corporation, also located at 730 2nd Avenue South, Suite 900, Minneapolis, Minnesota 55402 and functions as a holding company. ETI provides local and long distance telecommunications services in several states.

The following entity owns a ten percent or greater direct or indirect interest in OPCO:

Name:	Eschelon Telecom, Inc. ("ETI")
Address:	730 2nd Avenue South, Suite 900 Minneapolis, Minnesota 55402
Citizenship:	US - Delaware Corporation
Principal business:	Provide of local and long distance telecommunications services
Percent of ownership:	100%

None of ETI's officers or directors sits on the boards of any foreign telecommunications carriers.

The following entities own a ten percent or greater direct or indirect interest in ETI:

(1)	Name:	Wind Point Partners IV, L.P. ("Wind Point Partners")
	Address:	One Towne Square, Suite 780 Southfield, MI 48076

Citizenship: US – Delaware LP
Principal business: Investments
Percent of ownership: 20.5%

No limited partner of Wind Point Partners holds a ten percent or greater ownership interest in ETI under the Commission's ownership attribution rules. The general partner of Wind Point Partners is:

Name: Wind Point Investors IV, L.P. ("Wind Point Investors")
Address: One Towne Square, Suite 780
Southfield, MI 48076
Citizenship: US – Delaware LP
Principal business: Investments

No limited partner of Wind Point Investors holds a ten percent or greater ownership interest in ETI under the Commission's ownership attribution rules. The general partner of Wind Point Investors is:

Name: Wind Point Advisors, LLC ("Wind Point Advisors")
Address: One Towne Square, Suite 780
Southfield, MI 48076
Citizenship: US – Delaware LLC
Principal business: Investments

There is no managing member of Wind Point Advisors and no member of Wind Point Advisors has a ten percent or greater ownership interest in ETI under the Commission's ownership attribution rules.

(2) Name: Bain Capital Fund VI, L.P. ("Bain Capital")
Address: 111 Huntington Avenue
Boston, MA 02199
Citizenship: US – Delaware LP
Principal business: Investments
Percent of ownership: 25.7%

No limited partner of Bain Capital holds a ten percent or greater ownership interest in ETI under the Commission's ownership attribution rules. The general partner of Bain Capital is:

Name: Bain Capital Partners VI, L.P. ("Bain Partners")
Address: 111 Huntington Avenue
Boston, MA 02199
Citizenship: US – Delaware LP
Principal business: Investments

No limited partner of Bain Partners holds a ten percent or greater ownership interest in ETI under the Commission's ownership attribution rules. The general partner of Bain Partners is:

Name:	Bain Capital Investors, LLC ("Bain Investors")
Address:	111 Huntington Avenue
	Boston, MA 02199
Citizenship:	US – Delaware LLC
Principal business:	Investments

Bain Investors has no economic interest in Bain Partners. There is no managing member of Bain Investors and no member of Bain Investors has a ten percent or greater ownership interest in ETI under the Commission's ownership attribution rules.

No other entity will hold a 10% or greater direct or indirect interest in ETI.

Following consummation of the proposed Transaction, there will be no interlocking directorates with any foreign carrier.

(i) Certification that ETI and MTI are not foreign carriers and is not affiliated with a foreign carrier:

As evidenced by the signatures to this Application, ETI certifies that following consummation of the proposed Transaction; ETI will not be a foreign carrier and will not be affiliated with any foreign carriers. As evidenced by the signatures to this Application, MTI certifies that following consummation of the proposed Transaction; MTI will not be a foreign carrier and will not be affiliated with any foreign carriers.

(j) Certification that ETI does not intend to provide international telecommunications services to a destination country for which any of Sections 63.18(j)(1)-(4) of the Commission's Rules, 47 C.F.R. § 63.18(j)(1)-(4) is true.

As evidenced by the signatures to this Application ETI certifies that it does not intend to provide international telecommunications services to any destination country for which any of the conditions stated in Sections 63.18(j)(1)-(4) of the Commission's Rules, 47 C.F.R. § 63.18(j)(1)-(4) are true.

(k) Not applicable (see response to item (j)).

(l) Not applicable (see response to item (j)).

(m) Not applicable. ETI qualifies for a presumption of non-dominance under Section 63.10(a) (1) as it is not a foreign carrier, nor is it affiliated with a foreign carrier. Following the transaction, ETI and MTI will continue to be presumptively classified as non-dominant carriers.

(n) Certification that ETI has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future:

As evidenced by the signatures to this Application, ETI certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) Certifications by Parties that no party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a):

As evidenced by the signatures to this Application, Applicants certify, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301), that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Act of 1988.

(p) Streamlined Processing.

Applicants request streamlined processing of this application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12. This Application is eligible for streamlined processing pursuant to Section 63.12 of the Commission's Rules because: (1) ETI, the transferee, is not affiliated with a foreign carrier; (2) ETI is not affiliated with a dominant U.S. carrier; and (3) ETI does not seek authority to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of switched services over private lines, and none of the other scenarios outlined in Section 63.12(c) of the Commission's Rules apply. See 47 C.F.R. §§ 63.12(a)-(c).

V. INFORMATION REQUIRED BY SECTION 63.04(b) OF THE COMMISSION'S RULES

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, the additional information required by this section for the domestic Section 214 transfer of control application is provided in Exhibit A.

VI. CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application.

Dated this 5th day of July, 2006.

Respectfully submitted,

ESCHELON TELECOM, INC.

By: _____

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MOUNTAIN TELECOMMUNICATIONS, INC.

By: _____

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E-mail: mhazel@mtntel.com

VI. CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application.

Dated this 5th day of July, 2006.

Respectfully submitted,

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Vice President
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EXHIBIT A

DOMESTIC SUPPLEMENT TO JOINT INTERNATIONAL AND DOMESTIC APPLICATION FOR CONSENT TO TRANSFER CONTROL

I. Pursuant to 47 C.F.R. § 63.04(b), the following information required by 47 C.F.R. 63.04(a)(6)-(a)(12) is supplied in connection with the attached Joint International and Domestic Application for Consent to Transfer Control.

(6) Description of the transaction:

On June 30, 2006, ETI and MTI entered into an Agreement and Plan of Merger ("Agreement") pursuant to which ETI will acquire all of the stock of MTI, a Delaware corporation and Mountain Telecommunications of Arizona., an Arizona corporation and a direct wholly owned subsidiary of MTI. As a result, MTI will become a direct, wholly-owned subsidiary of ETI. Closing of the Transaction is contingent upon, among other things, receipt of necessary regulatory approvals from the Commission and other Governmental approvals.

Applicants emphasize that the proposed Transaction will be entirely transparent to customers of MTI. Because of the nature of this merger, the transfer of control of MTI will not result in any immediate changes on MTI's operations nor have any adverse effect customers who receive service from MTI. Immediately after consummating the transaction, those customers will continue to receive the identical end user telecommunications and other services at the rates and pursuant to the terms and conditions of service these customers currently receive from MTI. Any future changes in the rates, terms and conditions of service will be made consistent with applicable law. Further, MTI will continue to provide services under the MTI name. The Transaction will not result in any discontinuance of service for MTI customers. In sum, consummation of the Transaction will result in no perceivable changes to MTI's customers.

(7) A description of the geographic areas in which the transferor and transferees offer domestic telecommunications services, and what services are provided in each area:

ETI's subsidiaries provide local and long-distance voice, and data transmission services and business telephone systems in Minnesota, California, Colorado, Arizona, Utah, Nevada, Washington and Oregon. ETI provides long-distance services in New York. MTI provides resold local, resold long distance, and data transmission services to residential customers and small and medium-sized businesses in the state of Arizona.

(8) A statement as to how the Application fits into one or more of the presumptive streamlined categories in Section 63.03 or why it is otherwise appropriate for streamlined treatment:

ETI as transferee will have less than a 10 percent market share in the interstate, interexchange market as a result of the transaction and will provide services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to this transaction. Further, neither ETI nor MTI is dominant with respect to any service. Therefore, this Application is appropriate for streamlined treatment pursuant to 47 C.F.R. § 63.03(b) (2).

(9) Identification of all other Commission applications related to the same transaction:

The attached Application for consent to the transfer of control related to the provision of international telecommunications services is being submitted herewith.

(10) A statement of whether the Applicants are requesting special consideration because either party to the transaction is facing imminent business failure:

Applicants do not seek special consideration in this Application.

(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction:

Applicants do not seek any waivers in conjunction with the transactions discussed in this Application.

(12) A statement showing how grant of the Application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets:

The Applicants respectfully submit that the Transaction serves the public interest. After consummation of the Transaction, MTI's customers will continue to receive the same service under the same tariffs as at present. The Transaction involves no change in the entity providing service directly to customers or the end user services, rates, terms and conditions of

such services. All existing retail tariffs will remain in place. The transfer of control will be entirely transparent to MTI customers and will not have any adverse impact on them. The only change will be in the ultimate ownership of MTI.

The Applicants expect that the Transaction will increase competition in the telecommunications market by strengthening ETI's position as an effective and multifaceted telecommunications carrier. The Transaction will allow ETI to combine its financial, technical and market resources and expertise with that of MTI, thereby enhancing its ability to provide reliable, competitively-priced services to customers. By permitting ETI to strengthen its competitive position the proposed Transaction will make ETI a more financially secure competitive alternative to the incumbents and promote ETI's ability to enter additional markets, thus expanding competitive choices for customers.

MTI focuses on delivering reliable, high-quality voice and data transmission services to the medium and large business markets. Customers currently served by MTI fall squarely within ETI's market niche and therefore make an ideal fit with ETI's long term expansion goals. Consummation of the proposed Transaction will make available to MTI customers ETI's innovative and proprietary operations support systems, which provide leading edge electronic bonding, provisioning, customer care and billing system capabilities. ETI is committed to exceeding customer expectations and understands that service and support are just as important as having the latest technology at competitive prices. That is why ETI supports its products and services with dedicated and skilled account teams. MTI customers can expect the same dedicated attention if the proposed Transaction is consummated.

The transfer of control of MTI to ETI will not cause any anti-competitive effects. MTI and ETI together will achieve economies of scale and scope, which will enhance ETI's ability to deploy new products and services and expand into new markets. Although MTI and ETI both provide services in Arizona, neither has significant market share in this market and the combined market share post-closing will not exceed 10 percent in any interstate interexchange market. In all instances where MTI and ETI provide local exchange services, the incumbent local exchange carrier has a virtual monopoly and this Transaction will not diminish the ILEC's dominant market position. Furthermore, other competitive carriers such as Time Warner Telecom, XO Communications, Integra and a plethora of others are active participants in these markets. Accordingly, the transfer of control of MTI to ETI will increase, not degrade, the competitiveness of these markets. For each of the foregoing reasons, grant of the proposed transaction is in the public interest.

As filed with the Securities and Exchange Commission on March 17, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

FOR ANNUAL AND TRANSITION REPORTS PURSUANT TO SECTIONS 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

(MARK ONE)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2005

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE TRANSITION PERIOD FROM TO

Commission File Number: 000-50706

ESCHELON TELECOM, INC.

(Exact name of registrant as specified in its charter)

Delaware	**41-1843131**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
730 Second Avenue Minneapolis, MN	**55402**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(612) 376-4400**

Securities Registered Pursuant to Section 12(b) of the Act:

None

Securities Registered Pursuant to Section 12(g) of the Act:

Common Stock, par value $0.01 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to the Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of February 28, 2006, the number of outstanding shares of the registrant's Common Stock, par value $0.01 per share, was 14,721,287 shares.

DOCUMENTS INCORPORATED BY REFERENCE

A portion of the information required by Part III of the Form 10-K is incorporated by reference from portions of our definitive proxy statement for our 2006 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission.

FORWARD-LOOKING STATEMENTS

This annual report includes forward-looking statements within the meaning of, and which have been made pursuant to, the U.S. Private Securities Litigation Reform Act of 1995. We make "forward-looking statements" throughout this annual report. Whenever you read a statement that is not solely a statement of historical fact (such as when we state that we "may," "will" or "plan to" perform in a certain manner or that we "intend," "believe," "expect," "anticipate," "estimate" or "project" that an event will occur, or the negative thereof, and other similar statements), you should understand that our expectations may not be correct, although we believe that they are reasonable. You should also understand that our plans may change. The forward- looking information contained is generally located in the sections of this annual report entitled "Business" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," but may be found in other locations as well. These forward-looking statements generally relate to our strategies, plans and objectives for future operations and are based upon management's current plans and beliefs or estimates of future results or trends.

Forward-looking statements, such as those regarding management's present plans or expectations for new product offerings, capital expenditures, cost-saving strategies and growth are not guarantees of future performance. They involve risks and uncertainties relative to return expectations and related allocation of resources, and changing economic or competitive conditions, as well as the negotiation of agreements with third parties and the factors discussed in the section entitled "Risk Factors" and elsewhere herein, which could cause actual results to differ from present plans or expectations, and such differences could be material. Similarly, forward-looking statements regarding management's present expectations for operating results and cash flow involve risks and uncertainties relative to these and other factors, such as the ability to increase revenues and/or to achieve cost reductions and other factors discussed in the section entitled "Risk Factors" or elsewhere herein, which also would cause actual results to differ from present plans. Such differences could be material. All forward-looking statements attributable to us or by any persons acting on our behalf are expressly qualified in their entirety by these cautionary statements.

As such, actual results or circumstances may vary materially from such forward-looking statements or expectations. Readers are also cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date these statements were made. Except as required by law, we may not update these forward-looking statements, even if our situation changes in the future.

Our Markets

We operate in 19 markets in the western United States. According to the U.S. Census Bureau, population growth from 1990 to 2000 across our markets averaged 27.6%, which was more than double the national average of 13.2%, and annual small and medium-sized business growth from 1997 to 2001 across our markets averaged 1.6%, more than triple the national average of 0.5%. According to Kagan World Media, our markets are expected to remain among the fastest growing markets in the United States, with an average annual population growth rate of 1.9% through 2006, compared to the national average of 1.1%.

Our markets are Minneapolis and St. Paul, MN; Denver and Boulder, CO; Phoenix, AZ; Santa Rosa, CA; Seattle, Tacoma, Everett, Bellingham, Olympia and Yakima, WA; Portland, Salem, Eugene, Bend and Medford, OR; Salt Lake City, UT; and Reno, NV, and are primarily in the region in which Qwest Communications is the incumbent local exchange carrier. Within our markets, we have colocated in RBOC central offices that serve a high concentration of potential small and medium-sized business customers. As of December 31, 2005, our facilities-based network covered approximately 70% of our defined market through only 25% of the total RBOC central offices in each market.

Products and Services

We provide our customers a complete package of voice, data and BTS services. Within our three product lines, we provide a wide range of alternatives and customized service packages allowing us to reach a larger number of potential customers and provide a comprehensive product solution. We sell products and services at competitive prices, but focus on product quality and customer service to attract and maintain customers.

Voice Services. We provide customized packages of voice services to fulfill all of our customers' voice communication needs. We offer local telephone services, including basic dial tone services and vertical features such as call forwarding, call waiting and call transfer; advanced call management capabilities such as calling number identification, caller name identification, automatic call back and distinctive ringing; plus enhanced services such as voice mail and direct inward dialing. Our services are provided via analog and digital service platforms. We offer a full range of intra-state, inter-state and international long distance services and calling plans to customers who purchase our local service. Our services include "1+" outbound calling, inbound toll free service and complementary services such as dedicated long distance, operator and directory assistance and calling cards.

Data Services. Our data offerings are designed to provide a full range of services to our customers. We offer high-speed data transmission services, such as dedicated and broadband Internet access, and we also provide and support e-mail and web-hosting services. Our IDSL product allows us to reach customers beyond the typical distance threshold of a normal DSL product. Our data services are offered at transmission speeds that range from 56Kbps to 6Mbps.

Business Telephone Systems. We provide telephone equipment systems and voice messaging products. We also procure and install voice and data cable, patch panels, routers and other network hardware. We offer customers multi-year maintenance agreements to maintain and upgrade their systems. Some of our key manufacturers include Mitel, Inter-Tel, NEC, Cisco and Adtran.

customer is contacted multiple times by our service delivery team during the service initiation process to ensure accuracy and on-time delivery of services ordered.

We segment our customer base to better serve their specific needs. We have national account managers responsible for maintaining relationships with multiple location accounts and local account managers responsible for single market accounts. The local and national account managers coordinate service requests with our centralized call center associates to ensure customer satisfaction.

Our "866-Eschelon" customer service number provides a single contact point for customers to gain quick access to customer service or their account manager. Our associates consistently answer more than 85% of all calls within 20 seconds. Our call center is staffed by trained associates whose performance is closely monitored. Our centrally managed service platform allows us to actively track and analyze call response times, trouble ticket resolution and customer satisfaction for every in-bound call received. Our centralized repair service bureau is complemented by our field service technicians who can readily be deployed to the customer premises. We also regularly survey our customers allowing us to track, analyze and adjust service and processes as necessary.

We have a centralized network operating center through which we monitor our network on a 24x7 basis and are able to detect and troubleshoot many types of network problems before our customers are aware of them.

Our senior director of customer retention is responsible for coordinating our sales force, repair service bureau, national and local account managers, customer service organization and retention team to proactively manage customer retention. All members of these groups are trained to identify at-risk customer accounts, which are then referred to our retention team for specific, personalized care. We analyze our survey, performance and churn data on a monthly basis to better understand our customers and to implement or alter operating procedures to improve our operations and customer retention.

Backlog of customer orders has remained at relatively low levels versus overall lines in service. As such, backlog is not material to our annual revenue and is not a meaningful indicator of potential future revenue.

Network Overview and Deployment

We have constructed our network around owned switching and collocation equipment. Our network is a system of switches and equipment colocated in RBOC central offices or carrier hotels that are interconnected using primarily leased transport and then linked to customers' premises using leased loops. In almost all cases, we purchase the last mile connection from the RBOC. In addition, with the acquisition of ATI, we acquired active (i.e., working or "lit") fiber transport connecting ATI's switches and colocations in a number of ATI's markets.

Voice and Data Switches. We have deployed Nortel, Lucent, Tellabs and Cisco equipment in each of our major markets. We use Nortel DMS and Lucent 5ESS switches for local dial tone services, the Tellabs digital crossconnect system (DACS) for terminating, routing and aggregating on DS1/DS3 transport and customer connections, and Cisco BPX and Nortel Passport ATM switches in combination with Cisco core and edge routers for advanced data services. We believe the Nortel DMS 500 and Lucent 5ESS switches are reliable, proven platforms for providing local services. The Cisco BPX and Nortel Passport ATM switches are highly flexible and integrate well with the Cisco IP platforms to provide network services over common network infrastructures.

Colocation Equipment. We use Zhone Technologies, Inc. Universal Edge 9000, or UE9000, access node equipment and Lucent AnyMediaFast Digital Loop Carriers in each of the 127 RBOC central offices in which we have physically colocated in order to provide local analog line service to our customers. The UE9000 access node and AnyMediaFast enable effective delivery of industry standard voice service

- ***Centrex Resale***. We resell Centrex services in the Eschelon legacy Reno market. Centrex is a value-added business telephone service we purchase from AT&T at wholesale rates and invoice on our own bills.

Competition

The communications industry is highly competitive. Our ability to compete effectively depends upon our continued ability to maintain high quality, market-driven services at prices competitive to those charged by the RBOCs. Many of our current and potential competitors have financial, technical, marketing, personnel and other resources, including brand name recognition, substantially greater than ours, as well as other competitive advantages over us.

RBOCs. In our existing markets, we compete principally with Qwest. Qwest and other RBOCs have long-standing relationships with their customers, have financial, technical and marketing resources substantially greater than ours, have the potential to subsidize competitive services with revenue from a variety of businesses, and currently benefit from existing regulations that favor RBOCs over us in some respects. As a relatively recent entrant in the communications services industry, we may not achieve a major share of the market for any of our services. While regulatory initiatives based on the Telecommunications Act, which allow competitive service providers such as us to interconnect with Qwest's facilities, provide increased business opportunities for us, these interconnection opportunities have been, and likely will continue to be, accompanied by increased pricing flexibility for and relaxation of regulatory oversight of Qwest and the other RBOCs. Future regulatory decisions could grant the RBOCs greater pricing flexibility or other regulatory relief. These initiatives could have a material adverse effect on us.

Competitive Service Providers and Other Market Entrants. We also face competition from other competitive service providers. Consolidation and strategic alliances within the communications industry or the development of new technologies could put us at a competitive disadvantage. The Telecommunications Act radically altered the market opportunity for new competitive service providers. Because the Telecommunications Act requires RBOCs to unbundle their network services, new competitive service providers are able to rapidly enter the market by installing switches and leasing local loops.

In addition to the new competitive service providers, RBOCs and other competitors described above, we may face competition from other market entrants such as cable television companies, wireless service providers and virtual service providers using Voice over Internet Protocol (VoIP) over the public Internet or private networks. Electric utility companies have existing assets and low cost access to capital which could allow them to enter a market and accelerate network development. Cable television companies are entering the communications market by upgrading their networks with hybrid fiber coaxial lines and installing facilities to provide fully interactive transmission of broadband voice, video and data communications. Wireless service providers are developing wireless technology for deployment in the United States, intending to provide a broadband substitute for traditional wireline local telephones. Some companies are delivering voice communications over the Internet.

Long Distance Service. The long distance communications industry has numerous entities competing for the same customers which has historically created high churn as customers frequently change long distance providers in response to offerings of lower rates or promotional incentives. Prices in the long distance market have declined significantly in recent years and are expected to continue to decline. Our primary competitors for long distance services are interexchange carriers, RBOCs and resellers. We believe that pricing levels are a principal competitive factor in providing long distance service; however, we seek to avoid direct price competition by packaging long distance service, local service and Internet access service together with a simple pricing plan.

Regulation

Overview

We are subject to federal, state, local and foreign laws, regulations, and orders affecting the rates, terms, and conditions of certain of our service offerings, our costs, and other aspects of our operations, including our relations with other telecommunications service providers. Regulation varies from jurisdiction to jurisdiction, and may change in response to judicial proceedings, legislative and administrative proposals, government policies, competition, and technological developments. We cannot predict what impact, if any, such changes or proceedings may have on our business or results of operations, and we cannot guarantee that regulatory authorities will not raise material issues regarding our compliance with applicable regulations.

In general, the FCC has jurisdiction over our facilities and services to the extent they are used in the provision of interstate or international communications services. State regulatory commissions, commonly referred to as PUCs (public utility commissions), generally have jurisdiction over facilities and services to the extent they are used in the provision of intrastate services, unless Congress or the FCC has preempted such regulation. Local governments may regulate aspects of our business through zoning requirements, permit or right-of-way procedures, and franchise fees. Foreign laws and regulations apply to communications that originate or terminate in a foreign country. Our operations also are subject to various environmental, building, safety, health, and other governmental laws and regulations. Generally, the FCC and PUCs do not regulate the Internet, video conferencing, or certain data services, although the underlying communications components of such offerings may be regulated.

Federal law generally preempts state statutes and regulations that restrict the provision of competitive local, long distance and enhanced services; consequently, we generally are free to provide the full range of local, long distance and data services in every state. While this federal preemption greatly increases our potential for growth, it also increases the amount of competition to which we may be subject. Enforcing federal preemption against certain state policies and programs may be costly and may involve considerable delay.

Federal Regulation

The Communications Act of 1934, as amended, or ("the Communications Act"), grants the FCC authority to regulate interstate and foreign communications by wire or radio. We are regulated by the FCC as a non-dominant carrier and are subject to less comprehensive regulation than dominant carriers, but we remain subject to numerous requirements of the Communications Act, including certain provisions of Title II, applicable to all common carriers, which require us to offer service upon reasonable request and pursuant to just and reasonable charges and terms, and which prohibit unjust or unreasonable discrimination in charges or terms. The FCC has authority to impose additional requirements on non-dominant carriers.

The Telecommunications Act of 1996, or ("the Telecommunications Act"), amended the Communications Act to eliminate many barriers to competition in the U.S. communications industry. The Telecommunications Act set basic standards for relationships between communications service providers, including relationships between new entrants and RBOCs. In general, the Telecommunications Act requires RBOCs to provide competitors with nondiscriminatory access to and interconnection with RBOC networks, and to provide UNEs at cost-based prices. The FCC and PUCs have adopted rules to implement the Telecommunications Act and to encourage competition.

Long Distance Competition. Section 271 of the Communications Act, enacted as part of the Telecommunications Act, established a process by which an RBOC could obtain authority to provide long distance service in a state within its region. The process required demonstrating to the FCC that the

Unbundled Network Elements. The Telecommunications Act requires RBOCs to provide requesting telecommunications carriers with nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and non-discriminatory, in accordance with the other requirements set forth in Sections 251 and 252 of the Telecommunications Act. The Telecommunications Act gives the FCC authority to determine which network elements must be made available to requesting carriers such as us. The FCC is required to determine whether the failure to provide access to such network elements would impair the ability of the carrier seeking access to provide the services it seeks to offer. Based on this standard, the FCC developed an initial list of RBOC network elements that must be unbundled on a national basis, or UNEs, in 1996.

Those initial rules were set aside by the U.S. Supreme Court and the FCC subsequently developed revised unbundling rules, which also were set aside on appeal. In August 2003, in the Triennial Review Order, or TRO, the FCC substantially modified its rules governing access to UNEs. The FCC redefined the "impair" standard, concluding that a requesting carrier is impaired when a lack of access to a UNE poses barriers to entry, including operational and economic barriers that are likely to make entry into a market uneconomic. The FCC limited requesting carrier access to certain aspects of the loop, transport, switching and signaling/databases UNEs but continued to require some unbundling of these elements. In the TRO, the FCC also determined that certain broadband elements, including fiber-to-the-home, or FTTH, loops in greenfield situations, broadband services over FTTH loops in overbuild situations, packet switching, and the packetized portion of hybrid loops, are not subject to unbundling obligations.

On March 2, 2004, the U.S. Court of Appeals for the D.C. Circuit vacated certain portions of the TRO and remanded to the FCC for further proceedings. Specifically, the D.C. Circuit vacated the FCC's delegation of decision-making authority to state commissions and several of the FCC's nationwide impairment determinations. The D.C. Circuit also found that the FCC used a flawed methodology when making certain impairment determinations, including those relating to the mass market switching and local transport network elements, and remanded those determinations to the FCC for further analysis and justification. The D.C. Circuit affirmed the FCC's decision to relieve the RBOCs from unbundling obligations with respect to broadband elements. The D.C. Circuit did not make a formal pronouncement regarding the status of the FCC's finding regarding enterprise market loops.

In December 2004, the FCC adopted an Order on Remand of the TRO (the "TRRO"). The TRRO became effective on March 11, 2005. The TRRO limits access to certain UNEs in specific situations in which the FCC considers that CLECs are not impaired without access to the UNE: First, unbundled switching will be eliminated after a one-year transition period. During the transition, carriers will pay $1 per line more for unbundled switching and may not order new lines. Second, DS1 transport UNEs will no longer be available between wire centers that contain at least 38,000 business lines or have at least four fiber-based colocators. Third, DS3 transport or dark fiber UNEs will no longer be available between wire centers containing at least 24,000 business lines or at least three fiber-based colocators. Fourth, transport UNEs between RBOC wire centers and CLEC switches will no longer be available. Fifth, DS1 UNE loops will not be available to any building in a wire center containing at least 60,000 business lines and at least four fiber-based colocators. Sixth, DS3 UNE loops will not be available to any building in a wire center containing at least 38,000 business lines and at least four fiber-based colocators. Seventh, dark fiber UNE loops will no longer be available. The Order provides a one-year transition period for DS1 and DS3 transport and loops and an 18-month transition period for dark fiber facilities. Rates for UNEs that are no longer available will increase by 15% during the transition year, and CLECs will not be able to order additional UNEs along routes or to buildings that no longer qualify.

We did not lease material numbers of UNE-P lines from either AT&T or Verizon in 2005. With respect to our UNE-P lines leased from Qwest, we have converted them to an equivalent product under a commercial agreement referred to as Qwest's Platform Plus ("QPP"). Under QPP, we continue to have access to unbundled switching over a three-and-one-half year period at gradually increasing rates. We have

investment in facilities by understating forward-looking costs in pricing RBOC network facilities and overstating efficiency assumptions. We have participated in this proceeding as a member of a consortium of CLECs. To date the FCC has not yet issued revised TELRIC rules. The application and effect of a revised TELRIC pricing model on the communications industry generally and on certain of our business activities cannot be determined at this time.

In orders released in August 2004, the FCC extended unbundling relief to FTTH loops serving predominantly residential multiple dwelling units, or MDUs, and granted the same unbundling relief to fiber-to-the-curb, or FTTC, that it has applied to FTTH. We do not know where Qwest, AT&T or Verizon have replaced their copper facilities with fiber or where they may do so in the future. Consequently, we cannot determine the impact these orders will have upon our business. Because we serve business customers only, we do not believe these orders will substantially affect our business.

On October 27, 2004, the FCC issued an order granting requests by the RBOCs that the FCC forbear from enforcing the independent unbundling requirements of Section 271 of the Communications Act with regard to the broadband elements that the FCC had determined in the TRO are not subject to unbundling obligations (FTTH loops, FTTC loops, the packetized functionality of hybrid loops, and packet switching). The FCC declined to address broader forbearance requests by AT&T and Qwest, who had asked the FCC to forbear from applying Section 271 requirements to any element that the FCC has determined no longer meets the impairment standard. Legal challenges to these orders continue. Several state proceedings on this issue are ongoing. We cannot predict the outcome of these proceedings or the effect of such rulings on our business.

On September 23, 2005, the FCC released an order that largely deregulates "wireline broadband Internet access service." The FCC refers to "wireline broadband Internet access service" as a service that uses existing or future wireline facilities of the telephone network to provide subscribers with access to the Internet, including by means of both xDSL and next generation fiber-to-the-premises services. This decision by the FCC follows the decision by the United States Supreme Court in the *Brand X* case, issued June 27, 2005, in which the Court held that cable systems are not legally required to lease access to competing providers of Internet access service. Consistent with the FCC's previous classification of cable modem service as an information service, the FCC's decision in this order classifies broadband Internet access service as an information service because it intertwines transmission service with information processing and is not, therefore, a "pure" transmission service such as frame relay or ATM, which remain classified as telecommunications services. Under the terms of the Order, the FCC requires that existing transmission arrangements between broadband Internet access service providers and their customers be made available for a one year period from the effective date of the Order. This Order does not affect CLECs' ability to obtain UNEs, but does relieve the RBOCs of any duty to offer DSL transmission services subject to regulatory oversight. Internet service providers and our trade association have sought judicial review of this order in the U.S. Court of Appeals for the Third Circuit. Our QPP agreement with Qwest, which runs through mid-2008, provides us the ability to resell Qwest's DSL product. As a result, we expect no immediate adverse impact from the FCC's Wireline Broadband Order.

On September 16, 2005, the FCC partially granted Qwest's petition seeking forbearance from the application of the FCC's dominant carrier regulation of interstate services, and Section 251(c) requirements throughout the Omaha MSA. The FCC granted Qwest the requested relief in nine (9) of its twenty-four (24) Omaha central offices where it determined that competition from intermodal (cable) service providers was "extensive." Although the FCC required that Qwest continue to make UNEs available throughout Omaha, in the nine (9) specified central offices, Qwest may do so at non-TELRIC rates. The FCC did not grant Qwest the requested relief regarding its colocation and interconnection obligations. Both CLECs and Qwest have sought judicial review of this order in the U.S. Court of Appeals for the D.C. Circuit. We do not operate in the Omaha MSA, and cannot predict whether

access fees to local exchange carriers for the origination and termination of our long distance communications traffic. Generally, intrastate access charges are higher than interstate access charges. Therefore, to the degree access charges increase or a greater percentage of our long distance traffic is intrastate, our costs of providing long distance services will increase. As a local exchange provider, we bill long distance providers access charges for the origination and termination of those providers' long distance calls. Accordingly, in contrast with our long distance operations, our local exchange business benefits from the receipt of intrastate and interstate long distance traffic. As an entity that collects and remits access charges, we must properly track and record the jurisdiction of our communications traffic and remit or collect access charges accordingly. The result of any changes to the existing regulatory scheme for access charges or a determination that we have been improperly recording the jurisdiction of our communications traffic could have a material adverse effect on our business.

Our costs of providing long distance services, and our revenues for providing local services, also are affected by changes in access charge rates imposed on CLECs. Pursuant to the FCC's 2001 CLEC Access Charge Order, which lowered the rates that CLECs may charge long distance carriers for the origination and termination of calls over local facilities, access rates were reduced during Fiscal 2003 and Fiscal 2004. AT&T and Sprint have appealed the CLEC Access Charge Order to the D.C. Circuit, arguing that the FCC's benchmark rates are too high.

Over the last several years, the FCC has granted RBOCs significant flexibility in pricing interstate special and switched access services. In August 1999, the FCC granted immediate pricing flexibility to many RBOCs and established a framework for granting greater flexibility in the pricing of all interstate access services once an RBOC market satisfies certain prescribed competitive criteria. In February 2001, the D.C. Circuit upheld the FCC's prescribed competitive criteria. To date, the FCC has granted pricing flexibility in numerous specific markets to the RBOCs, including Qwest. This pricing flexibility may result in Qwest lowering its prices in high traffic density areas, including areas where we compete or plan to compete. We anticipate that the FCC will continue to grant RBOCs greater pricing flexibility for access services if the number of actual and potential competitors increases in each of these markets.

The FCC has stated that existing intercarrier compensation rules constitute transitional regimes and has promised to reform them. On March 3, 2005, the FCC released a Further Notice of Proposed Rulemaking seeking comment on a variety of proposals to replace the current system of intercarrier payments, under which the compensation rate depends on the type of traffic at issue, the type of carriers involved, and the end points of the communication, with a unified approach for access charges and reciprocal compensation. Because we both make payments to and receive payments from other carriers for the exchange of local and long distance calls, we will be affected by changes in the FCC's intercarrier compensation rules. We cannot predict the impact that any such changes may have on our business.

Detariffing. Consistent with other deregulatory measures, the FCC has largely eliminated carriers' obligations to file with the FCC tariffs containing prices, terms and conditions of service. All carriers, including us, were required to complete this detariffing process for interstate domestic commercial, or customer-specific, services by January 31, 2001, for consumer mass-market services by July 31, 2001, and for international services by January 2002. In lieu of federal tariffs, the FCC requires carriers with corporate web sites to post information relating to the rates, terms, and conditions of services on their web sites. Detariffing precludes our ability to rely on filed rates, terms, and conditions as a means of providing notice to customers of prices, terms and conditions under which we offer services, and requires us instead to rely on individually negotiated agreements with end users. We remain subject to the Communications Act's requirements that rates, terms and conditions of communications service be just, reasonable, and not discriminatory, and we are subject to the FCC's jurisdiction over customer complaints regarding our communications services.

authorization. Therefore, we cannot guarantee that we will not be subject to slamming complaints in the future.

Communications Assistance for Law Enforcement Act. The Communications Assistance for Law Enforcement Act, or CALEA, requires communications providers to provide law enforcement officials with call content and/or call identifying information under a valid electronic surveillance warrant, and to reserve a sufficient number of circuits for use by law enforcement officials in executing court-authorized electronic surveillance. Because we provide facilities-based services, we incur costs in meeting these requirements. Noncompliance with these requirements could result in substantial fines. Although we attempt to comply with these requirements, we cannot assure that we would not be subject to a fine in the future.

In August 2005, the FCC extended CALEA obligations to facilities-based providers of broadband Internet access service and to interconnected VoIP services. As a broadband Internet access provider, we will be subject to these new requirements once they take effect. The current compliance deadline is set for April 2007, although the FCC is considering requests from industry participants to grant additional time. Several parties have appealed the FCC's order extending new requirements in the U.S. Court of Appeals for the D.C. Circuit. Unless the decision is overturned on appeal, we could face increased compliance costs, which are uncertain in nature because the specific assistance-capability requirements for providers of broadband Internet access service have not yet been established.

Regulation of Internet Service Providers and VoIP. To date, the FCC has treated Internet service providers, or ISPs, as enhanced service providers, which are generally exempt from federal and state regulations governing common carriers. Nevertheless, regulations governing the disclosure of confidential communications, copyright, excise tax and other requirements may apply to our Internet access services. In addition, the FCC released a Notice of Proposed Rulemaking in September 2005 seeking comment on a broad array of consumer protection regulations for broadband Internet access services, including rules regarding the protection of CPNI, slamming, truth in billing, network outage reporting, service discontinuance notices, and rate-averaging requirements. We cannot predict whether the FCC will adopt new rules regulating broadband Internet access services and, if it does so, how such rules would affect us, except that new obligations could increase the costs of providing DSL service.

Moreover, Congress has passed a number of laws that concern the Internet and Internet users. Generally, these laws limit the potential liability of ISPs and hosting companies that do not knowingly engage in unlawful activity. We expect that Congress will consider this year a variety of bills, some of which, if signed into law, could impose obligations on us to monitor the Internet activities of our customers.

The use of the public Internet and private Internet protocol networks to provide voice communications services, including voice-over-Internet protocol, or VoIP, is a relatively recent market development. The provision of such services until recently was largely unregulated within the United States. To date, the FCC has not imposed regulatory surcharges or most forms of traditional common carrier regulation upon providers of Internet communications services. But the FCC has imposed obligations on providers of two-way interconnected VoIP services to provide E911 service, and it has extended CALEA obligations to such VoIP providers. Both decisions have been appealed in the U.S. Court of Appeals for the D.C. Circuit, although the E911 regulations have already taken effect. To the extent that we choose to provide interconnected VoIP services, we will bear costs as a result of these mandates.

Several additional pending FCC proceedings will affect the regulatory status of Internet telephony. On February 12, 2004, the FCC adopted a notice of proposed rulemaking to address, in a comprehensive manner, the future regulation of services and applications making use of Internet protocol, including VoIP. In the absence of federal legislation, we expect that through this proceeding the FCC will resolve certain

Legislation. Congress is considering various measures that would overhaul telecom laws in the United States. Bills introduced in the House of Representatives and the Senate address a wide variety of issues, including the regulation of broadband and VoIP services, network neutrality requirements, video franchising procedures, and municipal broadband services, among others. The prospects and timing of any potential legislation remain unclear, and as such, we cannot predict the outcome of any such legislation upon our business.

RBOC-IXC Mergers. On October 31, 2005, the FCC unanimously approved orders clearing the SBC-AT&T and Verizon-MCI mergers with relatively limited conditions in certain areas, including minimal divestitures and no reduction in special access rates. Although the Department of Justice, in its consent decrees approving the mergers concluded that the mergers would reduce competition in certain markets for special access, primarily for business customers, it concluded that there was no basis for imposing remedies in the mass market or Internet backbone market, and further concluded there was no problem in the overall structure of the resulting market that would justify imposing restrictions on the companies' dealings with each other. Rather than requiring them to divest lines and other facilities, however, it opted instead for the lighter remedy of requiring them to sell or divest, at market rates, ten-year leases for loops into certain buildings along with leases for dark fiber transport necessary to connect the loops to the facility of the purchaser of the lease. The end result is that Verizon must sell dark fiber leases to 350 buildings and SBC to 383 buildings. The FCC's conditions took the form of voluntary conditions offered by the merging parties, as follows: 1) SBC and Verizon agreed to freeze certain high-capacity special access rates for existing in-region AT&T and MCI customers for 30 months, and to refrain from providing themselves, their affiliates, or each other with special access services not generally available to other competitors. As Eschelon's reliance on special access is minimal, we do not expect these conditions to affect us positively or negatively. In addition, as our operations in the Verizon and SBC regions are minimal, we do not expect to see a significant impact as a result of the UNE rate freezes they each agreed to for a two year period from the merger closing date. On the closing of the merger, SBC renamed itself AT&T.

In March 2006, AT&T and Bell South announced they had reached an agreement to merge. This transaction will be subject to significant review by the FCC and the Department of Justice as well as by many state PUCs. We cannot predict whether the merger will be approved, and if so, what conditions may be placed upon the parties. Consequently, we cannot predict the effect of the merger upon our business.

State Regulation

The Communications Act maintains the authority of individual states to impose their own regulation of rates, terms and conditions of intrastate services, so long as such regulation is not inconsistent with the requirements of federal law or has not been preempted. Because we provide communications services that originate and terminate within individual states, including both local service and in-state long distance toll calls, we are subject to the jurisdiction of the PUC and other regulators in each state in which we provide such services. For instance, we must obtain a Certificate of Public Convenience and Necessity, or CPCN, or similar authorization before we may commence the provision of communications services in a state. We have obtained CPCNs to provide facilities-based or resold competitive local and interexchange service in California, Arizona, Colorado, Idaho, Minnesota, Nevada, New Mexico, New York, Oregon, Utah and Washington. There can be no guarantee that we will receive authorizations we may seek in other states in the future. As our local service business expands, we may offer additional intrastate services and may become subject to additional state regulations.

In addition to requiring certification, state regulatory authorities may impose tariff and filing requirements and obligations to contribute to state universal service and other funds. State commissions also have jurisdiction to approve negotiated rates, and to establish rates through arbitration, for

payments and a diminution of the service quality we receive. We cannot predict how state commissions will respond to such requests, nor the ultimate impact of such decisions on the Company.

State governments and regulators may attempt to assert jurisdiction over the provision of intrastate IP communications services. Various state regulatory authorities already have initiated proceedings to examine the regulatory status of Internet telephony services. While most PUCs have not indicated an intention to impose traditional communications regulatory requirements on IP telephony, some PUCs have issued rulings that may be interpreted differently. For instance, a state court in Colorado has ruled that the use of the Internet to provide certain intrastate services does not exempt an entity from paying intrastate access charges. Prior to imposing regulatory burdens on VoIP providers, however, the Colorado PUC opened a docket to investigate whether it has jurisdiction to regulate VoIP services. Any such state proceedings will be affected by the FCC's IP-Enabled Services rulemaking proceeding, in which the FCC is considering the extent to which conflicting state regulation of IP telephony is preempted.

State legislatures and state PUCs also regulate, to varying degrees, the terms and conditions upon which our competitors conduct their retail businesses. In general, state regulation of RBOC retail offerings is greater than the level of regulation applicable to CLECs. Qwest, AT&T and Verizon either have obtained or are actively seeking some level of increased pricing flexibility or deregulation, either through amendment of state law or through proceedings before state PUCs. Such increased pricing flexibility could have an adverse effect on our competitive position in those states because it could allow the RBOCs to reduce retail rates to customers while wholesale rates that we pay to Qwest stay the same or increase. We cannot predict whether these efforts will materially affect our business.

Local Regulation

In some municipalities where we have installed facilities, we are required to pay license or franchise fees based on a percentage of our revenue generated from within the municipal boundaries. We cannot guarantee that fees will remain at their current levels following the expiration of existing franchises or that other local jurisdictions will not impose similar fees.

Other Domestic Regulation

We are subject to a variety of federal, state, and local environmental, safety and health laws, and regulations governing matters such as the generation, storage, handling, use, and transportation of hazardous materials, the emission and discharge of hazardous materials into the atmosphere, the emission of electromagnetic radiation, the protection of wetlands, historic sites, and endangered species and the health and safety of employees. We also may be subject to laws requiring the investigation and cleanup of contamination at sites it owns or operates or at third-party waste disposal sites. Such laws often impose liability even if the owner or operator did not know of, or was not responsible for, the contamination.

We operate numerous sites in connection with our operations. We are not aware of any liability or alleged liability at any operated sites or third-party waste disposal sites that would be expected to have a material adverse effect on us. Although we monitor our compliance with environmental, safety and health laws and regulations, we cannot give assurances that it has been or will be in complete compliance with these laws and regulations. We may be subject to fines or other sanctions by federal, state and local governmental authorities if we fail to obtain required permits or violate applicable laws and regulations.

Available Information

Copies of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished to the Securities Exchange Commission pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available free of charge through our website (www.eschelon.com) as soon as reasonably practicable after we electronically file the material with, or furnish it to, the Securities Exchange Commission.

- larger networks; and
- benefits from existing regulations that favor the RBOCs.

We also face, and expect to continue to face, competition in our markets from other current and potential market entrants, including other competitive communications services providers, competitive local carriers, wireless carriers, resellers, competitive access providers, cable television companies, electric utility companies, microwave carriers and private networks built by large end users. Increasingly, we are subject to competition in the Internet services market from communications companies, online service providers, cable companies and Internet telephone and other IP-based service providers, such as 8 x 8, Inc., Net2Phone, Inc., pulver.com, Inc. and Vonage Holdings Corp. The Internet services providers are currently subject to substantially less regulation than competitive and traditional local telephone companies and are exempt from a number of taxes and regulatory charges that we are required to pay. In addition, the development of new technologies could give rise to significant new competitors in the local market.

In the long distance communications market, we face competition from large carriers such as AT&T, Verizon and Sprint, the RBOCs, wireless carriers, many smaller long distance carriers and IP-based service providers. Long distance prices have decreased substantially in recent years and are expected to continue to decline in the future as a result of increased competition. If this trend continues, we anticipate that revenue from our network services and other service offerings will likely be subject to significant price pressure, which could have a material adverse effect on our business, results of operations and financial condition.

Changes in current or future regulations in the local and long distance industries may hurt our business and results of operations and restrict the manner in which we operate our business. If current or future regulations change, we cannot assure you that the FCC or state regulators will grant us any required regulatory authorization or refrain from taking action against us if we are found to have provided services without obtaining the necessary authorizations, or to have violated other requirements of their rules and orders. Delays in receiving required regulatory approvals or the enactment of new adverse regulation or regulatory requirements may slow our growth and have a material adverse effect upon our business, results of operations and financial condition. We cannot assure you that changes in current or future regulations adopted by the FCC or state regulators, or other legislative, administrative or judicial initiatives relating to the communications industry, would not be less favorable to competitive communications services providers and more favorable to RBOCs and thus have a material adverse effect on our business, results of operations and financial condition.

The communications industry faces significant regulatory uncertainties and the resolution of these uncertainties could hurt our business, results of operations and financial condition. The Telecommunications Act requires, among other things, that RBOCs provide access to their networks to us; however, this act remains subject to judicial review and ongoing proceedings before the FCC and state regulators, including proceedings relating to interconnection pricing, access to and pricing for unbundled network elements and other issues that could result in significant changes to our business and business conditions in the communications industry generally. We must lease unbundled network elements from RBOCs at cost-based rates to serve our customers and to connect our telecommunications equipment. We provide our customers with telecommunications services through telephone lines or "loops" we lease from RBOCs. We pay RBOCs to maintain and repair these loops. We also purchase other unbundled network elements from RBOCs, such as transport between RBOC switches. Recent decisions by the FCC have eliminated or reduced our access to some unbundled network elements and increased the rates that we pay for such elements. This has required us to enter into commercial agreements with the RBOCs to obtain the elements at increased prices. Our business would be substantially impaired if the FCC, the courts, state commissions or the Congress eliminated our access to these elements or substantially increased the rates at

- retaining key personnel of the acquired business;
- failing to adequately identify or assess liabilities of that business;
- failure of that business to achieve the forecasts we used to determine the purchase price; and
- diverting our management's attention from the normal daily operation of our business.

These difficulties could disrupt our ongoing business and increase our expenses.

In addition, our ability to complete acquisitions will depend, in part, on our ability to finance the acquisitions, including the costs of acquisition and integration. Our ability may be constrained by our cash flow, the level of our indebtedness at the time, restrictive covenants in the agreements governing our indebtedness, conditions in the securities markets and other factors, many of which are not within our control. If we proceed with one or more acquisitions in which the consideration consists of cash, we may use a substantial portion of our available cash to complete the acquisitions. If we finance one or more acquisitions with the proceeds of indebtedness, our interest expense and debt service requirements could increase materially. The financial impact of acquisitions could materially affect our business and could cause substantial fluctuations in our quarterly and yearly operating results.

Risks Related to Our Business

We have a history of operating losses, and we may not be profitable in the future. We have incurred significant operating and net losses in the past and expect to continue to incur losses in the future. For the year ended December 31, 2003, we had an operating loss of $16.1 million, a net loss of $17.2 million and an accumulated deficit of $125.2 million. For the year ended December 31, 2004, we had an operating loss of $5.6 million, net income of $1.1 million and an accumulated deficit of $124.1 million. The net income for the year ended December 31, 2004 was primarily the result of a gain on extinguishment of debt of $18.2 million. For the year ended December 31, 2005, we had an operating loss of $4.3 million, a net loss of $31.0 million and an accumulated deficit of $155.0 million. We cannot assure you that our revenues will continue to grow or that we will achieve profitability in the future.

If the RBOCs with whom we have interconnection agreements engage in anticompetitive practices, our business will be adversely affected. Our business depends on our ability to interconnect with RBOC networks and to lease from them certain essential network elements. We obtain access to these network elements and services under terms established in interconnection agreements that we have entered into with Qwest, AT&T and Verizon. Like many competitive communications services providers, from time to time, we have experienced difficulties in working with the RBOCs with respect to obtaining information about network facilities, ordering network elements and services, interconnecting with RBOC networks and settling financial disputes. These difficulties can impair our ability to provide local service to customers on a timely and competitive basis. The Telecommunications Act of 1996, or the Telecommunications Act, required RBOCs to cooperate with competitive communication services providers and meet statutory requirements for opening their local markets to competition before they could receive permission to provide in-region long distance services. Now that each RBOC has met those requirements and received authorization to provide long distance services throughout its respective operating region, it may have less incentive to properly maintain the information, ordering and interconnection interfaces that we rely on and may otherwise fail to cooperate with us regarding service provisioning issues.

The RBOCs, including Qwest, AT&T and Verizon, have been fined by or have agreed to make voluntary payments in connection with consent decrees to both federal and state authorities for their failure to comply with the laws and regulations that support local competition. We believe these fines and payments may not substantially reduce the use of anticompetitive practices and illegal and anticompetitive activity may continue to occur in most of our markets. While we consistently undertake legal actions to oppose these anticompetitive actions and enforce our legal right of access to RBOC facilities, regulatory

result in decreasing our access charges. Such reductions could have a material adverse effect on our business, results of operations and financial condition.

The FCC has commenced a proceeding to revise its compensation rules regarding carrier access charges. Because we receive payments from long distance carriers for the calls their customers make that access our network facilities, we will be affected by any changes to the FCC's compensation rules. We cannot predict the impact that any such changes would have on our business.

Difficulties we may experience with the RBOCs and long distance providers over payment issues may hurt our financial performance. We have experienced difficulties with receiving payments due to us for services that we provide to RBOCs and long distance service providers. These balances due to us can be material. We generally have been able to reach mutually acceptable settlements to collect overdue and disputed payments, but we cannot assure you that we will be able to do so in the future. If we are unable to continue to timely receive payments and to create settlement agreements with other carriers, our business, results of operations and financial condition may be materially adversely affected. In addition, certain of our interconnection agreements allow the RBOCs to decrease order processing, disconnect customers and increase our security deposit obligations for delinquent payments. For example, interconnection agreement provisions required by Qwest provide that, in addition to late payment charges, Qwest may discontinue order processing if we fail to pay within 30 days of the payment due date, disconnect customers if we fail to pay within 60 days after the payment due date, and require a deposit if we pay late three times during a 12 month period. The deposit may be up to the estimated total monthly charges for an average two-month period within the first three months from the date of delinquency. If an RBOC makes an enforceable demand for an increased security deposit, we could have less cash available for other expenses, which could have a material adverse effect on our business, results of operations and financial condition.

The level of our outstanding total debt may adversely affect our financial health and prevent us from fulfilling our financial obligations. As of December 31, 2005, we had approximately $92.1 million of total indebtedness outstanding, excluding capital lease obligations. Our indebtedness could significantly affect our business and our ability to fulfill our financial obligations. For example, a high level of indebtedness could:

- make it more difficult for us to satisfy our current and future debt obligations;
- limit our ability to borrow additional funds or obtain other forms of financing;
- increase our vulnerability to general adverse economic and industry conditions;
- limit our ability to fund working capital, capital expenditures and other general corporate requirements out of future operating cash flows or with additional debt or equity financing;
- limit our flexibility in planning for, or reacting to, changes in our business or our industry;
- place us at a disadvantage to competitors with less debt; and
- make us vulnerable to interest rate fluctuations, if we incur any indebtedness that bears interest at variable rates.

Our outstanding notes contain restrictive covenants that limit our operating flexibility. The indenture governing our outstanding 8¼% senior second secured notes due 2010 contains covenants that, among other things, limit our ability to take specific actions, even if we believe them to be in our best interest. In addition, we may obtain a credit facility in the future which may include similar or additional covenants. These covenants may include restrictions on our ability to:

- incur additional indebtedness;
- pay dividends or distributions on, or redeem or repurchase, capital stock;

controls that we anticipate would be necessary to support rapid growth and to manage a competitive business in an evolving industry. Any failure to implement and improve these systems and controls and to maintain our other resources at a pace consistent with industry changes and the growth of our business could cause customers to switch to other competitive service providers, which would have a material adverse effect on us.

We are dependent on effective billing, customer service and information systems. Sophisticated back office information and processing systems are vital to our ability to control and monitor costs, provide outstanding customer service, bill and service customers, initiate, implement and track customer orders and achieve operating efficiencies. We have purchased and implemented our essential information systems consisting of our billing system, our sales order entry system, our customer provisioning system, our electronic bonding system, our mediation system and our switch information systems. The integration of these systems is challenging because all of these systems were developed by different vendors and must be coordinated through custom software and integration processes. Our sales, line count and other core operating and financial data are generated by these systems and the accuracy of this data depends on the quality of manual entry and system integration. Although we have completed some systems integration, the upgrading of these systems and the integration of updated systems is ongoing. In addition, we may experience negative adjustments to our financial and operating data if we encounter difficulties in these projects. We cannot assure you that any such adjustments arising out of our systems integration efforts will not have a material adverse effect in the future. If we are unable to effectively upgrade and integrate our operations and financial systems, our customers could experience delays in connection of service, billing issues and/or lower levels of customer service.

Declining prices for communications services could reduce our revenue and profitability. Prices for network services have decreased in recent years and are expected to continue to decline in the future. In addition, the long distance industry has historically experienced high customer churn, as customers frequently change their chosen long distance providers in response to lower rates or promotional incentives by competitors. This trend may continue.

We depend on a limited number of third party service providers for long distance and other services, and if any of these providers were to experience significant interruptions in its business operations, or were to otherwise cease to provide such services to us, our business could be materially and adversely affected. We depend on a limited number of third party service providers for long distance, data and other services. If any of these third party providers were to experience significant interruptions in their business operations, terminate their agreements with us or fail to perform the services or meet the standards of quality required under the terms of our agreements with them, our ability to provide these services to our customers would be materially and adversely affected for a period of time that we cannot predict. If we have to migrate the provision of these services to an alternative provider, we cannot assure you that we would be able to timely locate alternative providers of such services, that we could migrate such services in a short period of time without significant customer disruption so as to avoid a material loss of customers or business, or that we could do so at economical rates. If we are unable to locate such alternative providers we may need to seek an alternative that could be costly and disrupt our service or we would lose our transport capacity.

The communications industry is undergoing rapid technological changes, and new technologies may be superior to the technologies we use. Our failure to anticipate and keep up with such changes could have a material adverse effect on our business, results of operations and financial condition. The communications industry is subject to rapid and significant changes in technology and in customer requirements and preferences. If we fail to anticipate and keep up with such changes we could lose market share which could reduce our revenue. We have developed our business based, in part, on traditional telephone technology. Subsequent technological developments may reduce the competitiveness of our network and require expensive unanticipated upgrades or additional communications products that could be time consuming to integrate into our business and could cause us to lose customers and impede our ability to attract new customers.

response to our actions but could also be due to the actions of other union employers. Significant labor disruptions could adversely affect our ability to provide acceptable levels of service to our customers, which could result in customer dissatisfaction and a loss of business.

Terrorist attacks and other acts of violence or war may affect the markets in which we operate, our operations and our profitability. Terrorist attacks, such as the attacks that occurred in New York and Washington, D.C. on September 11, 2001, and subsequent worldwide terrorist actions may negatively affect our operations. We cannot assure you that there will not be further terrorist attacks that impact our employees, network facilities or support systems. Certain losses resulting from these types of events are uninsurable and others are not likely to be covered by our insurance.

Terrorist attacks may directly impact our business operations through damage or harm to our employees, network facilities or support systems, increased security costs or the general curtailment of voice or data traffic. Any of these events could result in increased volatility in or damage to our business and the United States financial markets and economies.

Item 1B. Unresolved Staff Comments.

None.

Commission for UNEs will remain in place unless and until the matter is overturned by the U.S. Supreme Court or new rates are set by the Commission.

The Minnesota Department of Commerce filed a complaint with the Minnesota PUC concerning agreements that CLECs, including us, have with certain interexchange carriers for pricing access services. They asserted that the agreements are unlawfully discriminatory and are required to be filed. The matter has been settled and new access rates were filed with the Minnesota PUC.

A lawsuit is pending against us and others by a former customer in Utah state court. The suit alleges damages of $1.0 million regarding alleged improper assignment of an "800" number. We are vigorously defending this claim and believe it to be without merit, but we cannot predict the outcome of the lawsuit. The discovery phase and period for making dispositive motions in the case have concluded. We anticipate that the court will dismiss the case due to the plaintiff's failure to pursue it.

In March 2005, we settled several lawsuits against Qwest on mutually acceptable terms. As a result of the settlement agreement, our suit against Qwest in the United States District Court, Western District of Washington regarding access, the development of an unbundled network element platform, and failing to make DSL available for resale was dismissed and we agreed to withdraw our appeal in the United States District Court, District of Minnesota of the unfavorable decision of the Minnesota PUC denying us service quality credits.

On June 21, 2005, we settled the lawsuit brought against us by Global Crossing. The parties agreed to release each other from all claims related to the dispute and to amend their agreement. The settlement agreement provided for us to pay Global Crossing $5.0 million and for Global Crossing to credit our future bills for approximately $564 thousand over the following six months.

Under the terms of the Global Crossing settlement, the Carrier Services Agreement between the parties, which had provided that Global Crossing was our exclusive provider of voice and data services, subject to certain exceptions, and that we had a purchase commitment of $100.0 million, was amended to shorten the term of the agreement to July 1, 2006, to eliminate the exclusivity, purchase commitment and shortfall provisions and to provide that Global Crossing will be our preferred provider for Internet transit and long haul data private line needs.

We cannot predict the outcome of any of these proceedings or their effect on our business. We are party from time to time to other ordinary course disputes that we do not believe to be material.

Item 4. Submission of Matters to a Vote of Security Holders.

None.

Item 6. Selected Financial Data.

The following tables set forth our selected consolidated financial and other data for the periods indicated. The selected consolidated financial data as of December 31, 2004 and 2005 and for the years ended December 31, 2003, 2004 and 2005 have been derived from the audited consolidated financial statements and notes to consolidated financial statements included elsewhere in this report. The selected consolidated financial data as of December 31, 2001, 2002 and 2003 and for the years ended December 31, 2001 and 2002 were derived from the audited consolidated financial statements and notes to consolidated financial statements not included herein. The following financial information is qualified by reference to and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and notes to consolidated financial statements included elsewhere in this report. Results for 2004 exclude the results of ATI except for the Balance Sheet Data. All dollar amounts are in thousands of dollars, except per share amounts.

	Year Ended December 31,				
	2001	2002	2003	2004	2005
Statements of operations data:					
Revenue:					
Network services	$ 72,773	$ 96,209	$ 115,482	$ 131,780	$ 201,835
BTS	25,837	25,659	25,614	26,316	25,908
Total revenue	98,610	121,868	141,096	158,096	227,743
Cost of revenue:					
Network services	40,320	39,493	45,037	47,354	85,914
BTS	16,190	16,053	15,784	15,979	16,139
Total cost of revenue	56,510	55,546	60,821	63,333	102,053
Gross profit:					
Network services	32,453	56,716	70,445	84,426	115,921
BTS	9,647	9,606	9,830	10,337	9,769
Total gross profit	42,100	66,322	80,275	94,763	125,690
Operating expenses:					
Sales, general and administrative	55,960	68,920	66,252	69,255	90,310
Depreciation and amortization	28,307	25,261	30,099	31,105	39,653
Total operating expenses	84,267	94,181	96,351	100,360	129,963
Operating loss	(42,167)	(27,859)	(16,076)	(5,597)	(4,273)
Other income (expense)(1)	(11,535)	48,052	(1,102)	6,712	(27,369)
Income (loss) before income taxes(1)	(53,702)	20,193	(17,178)	1,115	(31,642)
Income taxes	(14)	(50)	(28)	(4)	(4)
Net income (loss) from continuing operations(1)	(53,716)	20,143	(17,206)	1,111	(31,646)
Income from discontinued operation, net of tax	—	—	—	—	329
Gain on sale of discontinued operation, net of tax	—	—	—	—	326
Net income (loss)(1)	(53,716)	20,143	(17,206)	1,111	(30,991)
Less preferred stock dividends and premium paid on repurchase of preferred stock(2)	(9,890)	(2,701)	(3,426)	(4,292)	—
Net income (loss) applicable to common stockholders	$ (63,606)	$ 17,442	$ (20,632)	$ (3,181)	$ (30,991)

restructuring, certain lenders with outstanding principal and interest due of $65,778 chose to receive $12,229 in cash to cancel all liabilities, as a result of which we recorded a pre-tax gain of $53,549. In accordance with SFAS No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, a portion of the reduction in the amount outstanding could not be immediately recognized as a gain, but instead would be recognized as a reduction to interest expense over the term of the new credit facility. As of December 31, 2003, $21,871 of excess carrying value had yet to be recognized as a reduction in interest expense. In March 2004, we paid off our senior secured credit facility, which resulted in a pretax gain of $18,195, for the remaining excess carrying value as of the payoff date.

In September 2005, we redeemed $50,630 accreted value ($57,750 principal amount) of our 8 3/8% senior second secured notes due March 15, 2010 at a redemption price of 112% of the accreted value. The $6,076 accreted-value premium was recorded as interest expense. In addition, we wrote off a proportionate amount of the associated debt issuance costs and recorded $2,579 as interest expense.

(2) In December 2004, in connection with our acquisition of ATI, we repurchased 6,780,541 shares of our series A convertible preferred stock for $5,085.

(3) Capital expenditures are the sum total of purchases of property and equipment including equipment purchased under a capital lease, cash paid for customer installation costs and internal capitalized labor.

(4) Each access line and access line equivalent is equal to one 64-kilobit customer line that is active and being billed. Unused capacity on T1 circuits is not included in our line count.

(5) Average monthly churn is the total access line service disconnections for the month as a percentage of total access lines in service at the end of the month.

(6) Net debt consists of total debt less cash, cash equivalents, restricted cash and available-for-sale securities.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the "Selected Financial Data" and the Consolidated Financial Statements and Notes to Consolidated Financial Statements included elsewhere in this annual report. Certain information contained in the discussion and analysis set forth below and elsewhere in this annual report, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risk and uncertainties. In evaluating such statements, you should specifically consider the various factors identified in this annual report that could cause results to differ materially from those expressed in such forward-looking statements, including matters set forth in the section entitled "Risk Factors."

Overview

We are a leading facilities-based provider of integrated voice and data services and business telephone systems in 19 markets in the western United States. As a facilities-based competitive communications services provider, we provide services to our customers primarily through our own network of telecommunications switches and related equipment and primarily leased telecommunications lines, or transport. We target the small and medium-sized business segment and currently serve over 50,000 customers, primarily within the local service territory of Qwest.

Early in our development, we expanded into new markets generally through acquisitions of companies that we augmented with our network services capabilities. We were founded in 1996 and shortly thereafter, we merged with Cady Communications, a business telephone systems company based in Minnesota, and began offering local and long distance voice services. In 1997 and 1998, we acquired three additional business telephone systems companies and launched voice services in five additional markets, including Denver, Phoenix, Portland, Salt Lake City and Seattle. In December 1999, we activated our first switch. In January 2000, we acquired an Internet service provider and began providing advanced data services. In March 2000 we began providing voice and data services over our network, which began our transition to a facilities-based competitive communications services provider. In January 2001, we acquired a business telephone systems company in Salt Lake City. On December 31, 2004, we consummated our eighth acquisition, ATI, whereby we enhanced our presence in Washington, Oregon and Nevada and entered California.

We measure our operational performance using a variety of indicators including revenue growth, the percentage of our revenue that comes from customers that we serve on-switch, gross margin percentage, operating expenses as a percentage of revenue and access line churn rates. We monitor key operating and customer service metrics to improve customer service, maintain the quality of our network and reduce costs.

The telecommunications industry is highly competitive. We believe we compete principally by offering superior customer service, accurate billing, a broad set of services and systems and competitive pricing. We compete with the RBOCs, other competitive communications services providers, and long distance and data service providers. While wireless providers are competing with us, we do not believe they are a competitive threat in the market nor are they likely to be in the near future, because of the different service standards that business customers require.

Key Components of Results of Operations

Revenue. Network services revenue consists primarily of local dial tone, switched access lines, long distance, access charges, and data service. Revenue from local telephone service consists of charges for basic local service, including dedicated T1 access, and custom-calling features such as call waiting and call forwarding. Revenue from long distance service consists of per-minute-of-use charges for a full range of traditional switched and dedicated long distance, toll-free calling, international, calling card and operator

commissions. We entered into agreements with Qwest and Verizon for UNE-P replacement products in 2005. As of December 31, 2005, we had approximately 50,000 access lines in service that were formerly categorized as UNE-P access lines and are now provided under commercial agreements. The Qwest UNE-E agreement was terminated with the adoption of Qwest's commercial UNE-P replacement product, QPP, and all Qwest UNE-E lines were moved to QPP on January 1, 2005. We believe we will incur higher costs in 2006 to obtain access to certain elements of telecommunications platforms as a result of the Triennial Review Remand Order.

Our network services cost of revenue also includes the fees we pay for long distance, data and other services. We have entered into long-term wholesale purchasing agreements for these services. Some of the agreements contain significant termination penalties and/or minimum usage volume commitments. In the event we fail to meet minimum volume commitments, we may be obligated to pay underutilization charges. We do not anticipate having to pay any underutilization charges in the foreseeable future.

We carefully review all of our vendor invoices and frequently dispute inaccurate or inappropriate charges. In cases where we dispute certain charges, we frequently pay only undisputed amounts on vendor invoices in order to pay proper amounts owed. Our single largest vendor is Qwest. We use estimates to determine the level of success in dispute resolution and consider past historical experience, basis of dispute, financial status and current relationship with vendors and aging of prior disputes in quantifying our estimates.

We account for all of our network depreciation in depreciation and amortization expense and do not have any depreciation expense in cost of revenue.

Our most significant business telephone systems costs of revenue are the equipment purchased from manufacturers and labor for service installation. To take advantage of volume purchase discounts, we purchase equipment primarily from three manufacturers pursuant to master purchase agreements we have with these manufacturers. For all business telephone systems installations, our policy is to require a 30% deposit before ordering the equipment so our risk of excess inventory or inventory obsolescence is low. Business telephone systems cost of revenue also includes salaries and benefits of field technicians as well as vehicle and incidental expenses associated with equipment installation, maintenance and service provisioning.

Sales, General and Administrative. Sales, general and administrative expenses are comprised primarily of salaries and benefits, bonuses, commissions, occupancy costs, sales and marketing expenses, bad debt, billing and professional services.

Determining our allowance for doubtful accounts receivable requires significant estimates. We consider two primary factors in determining the proper level of the allowance, including historical collections experience and the aging of the accounts receivable portfolio. We perform a credit review process on each new customer that involves reviewing the customer's current service provider bill and payment history, matching customers with the National Telecommunications Data Exchange database for delinquent customers and, in some cases, requesting credit reviews through Dun and Bradstreet. For 2003, 2004 and 2005, our bad debt expense as a percentage of revenue was 0.4%, 0.5%, and 0.5%, respectively.

Depreciation and Amortization. Our depreciation and amortization expense currently includes depreciation for network related voice and data equipment, back office systems, furniture, fixtures, leasehold improvements, office equipment and computers. All internal costs directly related to the expansion of our network and operating and support systems, including salaries of certain employees, are capitalized and depreciated over the lives of the switches or systems, as the case may be. Capitalized customer installation costs are amortized over the approximate average life of a customer, which is currently 48 months. Detailed time studies are used to determine labor capitalization. These time studies are based on employee time sheets for those engaged in capitalizable activities.

revenue is primarily due to the inclusion of ATI, which was acquired on December 31, 2004, and, to a lesser extent, an increase in the average number of voice and data access lines in service. Over the past 12 months the number of voice lines increased by 56.0% to 270,662 lines at December 31, 2005, and the number of data lines increased by 88.4% to 144,790 lines at December 31, 2005. The growth in revenue associated with access line growth was partially offset by declines in pre-subscribed interexchange carrier charge (PICC) revenue, access revenue per minute of use and a decline in data revenue per line. The decline in PICC revenue was related to our dispute with Global Crossing, which was resolved in June 2005. As a result of that dispute, we did not record approximately $0.3 million per month of PICC revenue beginning in November of 2004. Access revenue per minute of use declined as a result of the scheduled FCC reduction of interstate rate levels in June 2004. Data revenue per line declined due to a combination of customers purchasing more bandwidth at discounted prices and general pricing pressures for data services in our markets. We expect all of the above trends in PICC revenue, access revenue and data revenue per line to continue for the foreseeable future. We expect a 10-15 basis point increase in customer line churn in the first quarter of 2006 related to the ATI system integration work in addition to normal seasonality that we typically see between the fourth and first quarters of each year. This increase will most likely negatively impact our line growth in the first quarter by one to two thousand lines. However, we believe any increase in customer line churn will be temporary in nature based on current customer service statistics. We expect to return to historical churn levels in the second quarter of 2006.

As we continue to grow, our size and customer line churn will begin to limit our access line growth rate on both an absolute and a percentage basis unless we increase our sales force and extend our network footprint.

BTS. BTS revenue was $25.9 million for the year ended December 31, 2005, a decrease of 1.6% from $26.3 million for the year ended December 31, 2004 due to a one-time revenue adjustment of $0.5 million made in 2005. We cannot predict future trends in capital spending by small and medium-sized business customers.

Cost of Revenue. Cost of revenue for the years ended December 31, 2004 and 2005 is as follows:

	Year Ended December 31,		
	2004	2005	% Change
Cost of revenue (in millions):			
Network services	$ 47.3	$ 85.9	81.4%
BTS	16.0	16.1	1.0
Total cost of revenue	$ 63.3	$ 102.0	61.1%

Network Services. Network services cost of revenue was $85.9 million for the year ended December 31, 2005, an increase of 81.4% from $47.3 million for the year ended December 31, 2004. This increase is primarily due to the inclusion of ATI, which was acquired on December 31, 2004, and recording approximately $4.7 million in costs related to the settlement with Global Crossing in June 2005. As a percentage of related revenue, network services cost of revenue for 2005 increased to 42.6% from 35.9% for 2004. This increase was primarily due to the Global Crossing settlement impact and the inclusion of ATI.

BTS. BTS cost of revenue was $16.0 million and $16.1 million for the years ended December 31, 2004 and 2005, respectively. As a percentage of related revenue, BTS cost of revenue for the year ended December 31, 2005 increased to 62.3% from 60.7% for the year ended December 31, 2004, primarily due to the one-time revenue adjustment discussed above. We do not expect future improvements in BTS cost of revenue as a percentage of related revenue unless we are able to significantly increase BTS revenue and therefore achieve greater volume discounts or economies of scale in our workforce.

Year Ended December 31, 2004 Compared to Year Ended December 31, 2003

Revenue. Revenue for the years ended December 31, 2003 and 2004 is as follows:

	Year Ended December 31, 2003	2004	% Change
Revenue (in millions):			
Voice and data services	$ 84.7	$ 98.4	16.1%
Long distance	18.7	21.2	13.7
Access	12.1	12.2	0.8
Total network services	115.5	131.8	14.1
BTS	25.6	26.3	2.7
Total revenue	$ 141.1	$ 158.1	12.0%

Network Services. Network services revenue was $131.8 million for the year ended December 31, 2004, an increase of 14.1% from $115.5 million for the year ended December 31, 2003. The increase in revenue was primarily due to an increase in the average number of voice and data access lines in service. From 2003, the number of voice lines increased by 11.1% to 173,492 lines at December 31, 2004, and the number of data lines increased by 52.9% to 76,861 lines at December 31, 2004. The growth in access lines was partially offset by declines in PICC revenue, access revenue per minute of use and a decline in data revenue per line. The decline in PICC revenue was related to our dispute with Global Crossing. As a result of that dispute, we elected not to record approximately $0.3 million per month of PICC revenue beginning in November of 2004. Access revenue per minute of use declined as a result of the scheduled FCC reduction of interstate rate levels. Data revenue per line declined due to a combination of customers purchasing more bandwidth at discounted prices and general pricing pressures for data services in our markets.

BTS. BTS revenue was $26.3 million for the year ended December 31, 2004, an increase of 2.7% from $25.6 million for the year ended December 31, 2003 due to a higher level of new system sales in 2004.

Cost of Revenue. Cost of revenue for the years ended December 31, 2003 and 2004 is as follows:

	Year Ended December 31, 2003	2004	% Change
Cost of revenue (in millions):			
Network services	$ 45.0	$ 47.3	5.1%
BTS	15.8	16.0	1.2
Total cost of revenue	$ 60.8	$ 63.3	4.1%

Network Services. Network services cost of revenue was $47.3 million for the year ended December 31, 2004, an increase of 5.1% from $45.0 million for the year ended December 31, 2003. This increase is due to our growth in access lines. As a percentage of related revenue, network services cost of revenue for 2004 declined to 35.9% from 39.0% for 2003. This improvement was due to the increase in our percentage of access lines on-net to 81% as of December 31, 2004 from 74% as of December 31, 2003.

BTS. BTS cost of revenue was $15.8 million and $16.0 million for the years ended December 31, 2003 and 2004, respectively. As a percentage of related revenue, BTS cost of revenue for the year ended December 31, 2004 decreased to 60.7% from 61.6% for the year ended December 31, 2003, due to better labor utilization.

government debt securities with maturities of more than three months but less than one year. The securities represent additional liquidity for us.

Financings. In March 2004, we completed an offering of $100.0 million of 8 3/8% senior second secured notes due 2010 at a discount resulting in gross proceeds of $84.8 million. We used the proceeds from our offering to retire bank debt, pay fees related to the offering and provide additional liquidity to our company. After repayment of our senior secured bank facility and fees related to the issuance of the notes, we received incremental cash of approximately $13.2 million. In November 2004, we completed our offering of $65.0 million of 8 3/8% senior second secured notes due 2010 at a discount resulting in gross proceeds of $51.4 million. On December 30, 2004, our equity sponsors purchased 20.0 million shares of new convertible preferred stock for net cash proceeds of $15.0 million. We used the proceeds from our offerings to complete our acquisition of ATI for $45.5 million, to redeem 6,780,541 shares of our Series A convertible preferred stock for $5.1 million and to pay fees related to the notes offering. On August 9, 2005, we consummated an initial public offering of 5,357,143 of our common stock at $14.00 per share. Net proceeds from the offering, after deducting underwriting discounts and commissions, were $69.8 million. Proceeds were used to redeem $50.6 million accreted value ($57.8 million principal amount) of our 8 3/8% senior second secured notes due 2010; to pay a $6.1 million premium due upon redemption of the notes; and to pay $2.7 million of fees and expenses associated with the offering.

Cash Flows Provided by Operating Activities. Cash provided by operating activities was $14.8 million for 2005 compared to cash provided by operating activities of $25.4 million for 2004. The decrease in cash provided by operating activities was due to an $11.7 million increase in cash interest payments. During 2005, we paid $6.1 million related to the redemption of 35% of our senior second secured notes due 2010 and $5.6 million related to additional interest payments as a result of our $65.0 million senior second secured notes due 2010 issued on November 29, 2004.

Cash provided by operating activities was $25.4 million for 2004 compared to cash provided by operating activities of $16.7 million for 2003. Our improvement in cash provided by operating activities was primarily due to our growth in gross profit accompanied by a smaller increase in our operating expenses. Working capital improved primarily through improvement in our accounts receivable collections and our accounts payable days outstanding.

Cash Flows Used in Investing Activities. Cash used in investing activities was $31.0 million for 2005 compared to $78.3 million for 2004 and $25.0 million for 2003. The decrease in cash used in investing activities from 2004 to 2005 was primarily due to 2004 activity including the acquisition of ATI on December 31, 2004. Also, the activity related to available-for-sale securities was a net use of cash in 2004 of $6.2 million versus $1.8 million of net cash provided in 2005. Cash used for investing in the maintenance and expansion of our network and back office systems and customer installation increased $6.1 million in 2005 versus 2004. The increase in cash used in investing activities from 2003 to 2004 was primarily due to the acquisition of ATI on December 31, 2004. In 2004 we also used cash to invest in available-for-sale securities with maturity dates of six months or less. In 2003, all of our cash used in investing activities was for the maintenance and expansion of our network and back office systems and customer installation.

Cash Flows Provided by (Used in) Financing Activities. Cash provided by financing activities was $15.6 million for 2005. The proceeds from our initial public offering of our common stock, after deducting underwriting discounts and commissions, were $69.8 million. Proceeds were used to redeem $50.6 million accreted value ($49.2 million book value; $57.8 principal amount) of our 8 3/8% senior second secured notes due 2010; to pay a $6.1 million premium due upon redemption of the notes, which is included in interest expense; and to pay $2.7 million of fees and expenses associated with the offering. We also used cash for payments on capital lease obligations. Cash provided by financing activities was $70.8 million for 2004. The net proceeds from the issuance of the senior second secured notes in March 2004 generated approximately $13.2 million, which is net of a $1.6 million prepayment penalty mentioned previously. The

be available on terms acceptable to us or our stockholders, or at all. Insufficient funds may require us to alter our business plan or take other actions that could have a material adverse effect on our business, results of operations and financial condition. If issuing equity securities raises additional funds, substantial dilution to existing stockholder may result.

Contractual Obligations

	Total	Less Than One Year	1-3 Years	3-5 Years	More Than Five Years
		(Dollars in thousands)			
Notes payable	$ 147,448	$ 8,982	$ 17,964	$ 120,502	$ —
Capital lease obligations	6,294	3,011	3,256	27	—
Operating lease obligations	24,133	4,929	9,187	5,745	4,272
Purchase obligations	2,544	1,101	1,443	—	—

The contractual obligation for notes payable includes related interest payments and assumes all notes currently outstanding are outstanding prior to the date of mandatory redemption and also assumes the notes are not otherwise required to be redeemed in a greater amount.

Application of Critical Accounting Policies

Our discussion of the financial condition and results of operations are based upon the consolidated financial statements, which have been prepared in conformity with accounting principles generally accepted in the United States. The preparation of our financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosure of any contingent assets and liabilities at the date of the financial statements. Management regularly reviews its estimates and assumptions, which are based on historical factors and other factors that are believed to be relevant under the circumstances. Actual results may differ from these estimates under different assumptions, estimates or conditions.

Critical accounting policies are defined as those that are reflective of significant judgments and uncertainties, and potentially result in materially different results under different assumptions and conditions. See Note 1 of the Notes to Consolidated Financial Statements for additional disclosure of the application of these and other accounting policies.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are initially recorded at fair value upon the sale of products or services to customers. Significant estimates are required in determining the allowance for doubtful accounts receivable. We consider two primary factors in determining the proper level of allowance, including historical collections experience and the aging of the accounts receivable portfolio. The allowance for doubtful accounts is based on the best facts available to us and is reevaluated and adjusted as additional information is received. We have a credit policy that helps minimize credit risk. We believe this risk is limited due to the large number and diversity of clients that comprise our customer base.

Valuation of Goodwill and Other Intangible Assets

Goodwill is tested at least annually for impairment at the reporting unit level. If the undiscounted future cash flows of a reporting unit are less than the carrying amount, an impairment charge is recognized. In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*, management completed its annual impairment test in the fourth quarter of 2004 and 2005 and determined that goodwill had not been impaired.

Cost of Revenue

We carefully review all of our vendor invoices and frequently dispute inaccurate or inappropriate charges. In cases where we dispute certain charges, we frequently pay only undisputed amounts on vendor invoices in order to pay the proper amounts owed. We record costs net of disputed amounts based on our expected outcome of disputes that are initiated. We use significant estimates to determine the level of success in dispute resolution and consider past historical experience, basis of dispute, financial status of the vendor and current relationship with the vendor and aging of prior disputes in quantifying our estimates. Disputes are common in our industry and we believe our treatment of disputes is consistent with industry practice.

We believe our cost of revenue accrual is sufficient to cover all outstanding disputes that we may lose. In addition, we accrue for expected costs that have not yet been invoiced and we believe our cost of revenue accrual is sufficient to cover these costs as well.

New Accounting Pronouncements

In November 2004, the Financial Accounting Standards Board ("FASB") issued SFAS No. 151, *Inventory Costs*. This statement requires that abnormal amounts of idle facility expense, freight, handling costs and spoilage be recognized as current-period charges. This statement also requires that fixed production overhead be allocated to inventory costs incurred by us beginning in fiscal 2006. We do not expect the adoption of this statement will have a material impact on our consolidated financial statements.

In December 2004, as amended on April 14, 2005, the FASB issued SFAS No. 123R, *Share-Based Payment: an amendment of FASB Statement No. 123 and FASB Statement No. 95*, which requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Prior to SFAS No. 123R, only certain pro forma disclosures of fair value were required. SFAS 123R must be adopted no later than the beginning of the first fiscal year beginning after June 15, 2005. We adopted SFAS 123R on January 1, 2006.

We will use the modified prospective method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS 123R for all share-based payments granted after the effective date and (b) based on the requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. We are evaluating the potential impact on the financial statements.

In December 2004, the FASB issued SFAS No. 153, *Exchanges of Nonmonetary Assets*. SFAS No. 153 addresses the measurement of exchange of nonmonetary assets. SFAS No. 153 eliminates the exception from fair value measurement for nonmonetary exchanges of similar productive assets in paragraph 21(b) of APB Opinion No. 29, *Accounting for Nonmonetary Transactions*, and replaces it with an exception for exchanges that do not have commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange. SFAS No. 153 is effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. We will adopt the provisions of SFAS No. 153 on January 1, 2006. The adoption of this statement will not have a material impact on our consolidated financial statements.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections*. SFAS No. 154 replaces Accounting Principles Board Opinion No. 20, *Accounting Changes*, and FASB Statement No. 3, *Reporting Accounting Changes in Interim Financial Statements*, and requires the direct effects of accounting principle changes to be retrospectively applied. The existing guidance with respect to accounting estimate changes and corrections of errors is carried forward in SFAS No. 154. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005.

Part III

Item 10. Directors and Executive Officers of the Registrant.

The disclosure under part I of Item 1 of this Form 10-K entitled "Executive Officers" is incorporated by reference into this Item 10.

The sections entitled "Election of Directors," "The Board of Directors and Committees" and "Section 16(a) Beneficial Ownership Reporting Compliance" in our definitive proxy statement for our 2006 Annual Meeting of Stockholders, which will be filed with the SEC (the "Proxy Statement"), are incorporated in this Form 10-K by reference.

We adopted a Code of Ethics that applies to all employees, our executive officers and directors. Our Code of Ethics is available on our website at www.eschelon.com.

We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of this Code of Ethics by posting such information on our website at the address specified above.

Item 11. Executive Compensation.

The sections of the Proxy Statement entitled "The Board of Directors and Committees," "Executive Compensation," "Employment and Change of Control Agreements," "Report of the Compensation Committee on Executive Compensation" and "Compensation Committee Interlocks and Insider Participation" are incorporated in this Form 10-K by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The section of the Proxy Statement entitled "Security Ownership of Certain Beneficial Owners and Management" is incorporated by reference into this Form 10-K.

Item 13. Certain Relationships and Related Transactions.

The section of the Proxy Statement entitled "Certain Relationships and Related Transactions" is incorporated by reference into this Form 10-K.

Item 14. Principal Accounting Fees and Services.

The section of the Proxy Statement entitled "Ratification of Independent Registered Public Accounting Firm" is incorporated by reference into this Form 10-K.

Exhibit Number	Description
4.8**	Security Agreement dated March 17, 2004 by and among Eschelon Operating Company; Eschelon Telecom, Inc.; Eschelon Telecom of Minnesota, Inc.; Eschelon Telecom of Washington, Inc.; Eschelon Telecom of Colorado, Inc.; Eschelon Telecom of Nevada, Inc.; Eschelon Telecom of Utah, Inc.; Eschelon Telecom of Oregon, Inc.; Eschelon Telecom of Arizona, Inc.; and The Bank of New York Trust Company, N.A. (as Collateral Agent.)
4.9**	Trademark Security Agreement dated March 17, 2004 by and among Eschelon Operating Company; Eschelon Telecom, Inc.; and The Bank of New York Trust Company, N.A. (as Collateral Agent.)
4.10**	Form of Initial 8 3/8% Senior Second Secured Notes due 2010.
4.11**	Form of Guarantee of Initial 8 3/8% Senior Second Secured Notes due 2010.
4.12**	Form of Exchange 8 3/8% Senior Second Secured Notes due 2010.
4.13**	Form of Guarantee of Exchange 8 3/8% Senior Second Secured Notes due 2010.
4.14+	Registration Rights Agreement dated November 29, 2004 by and among Jefferies & Company, Inc.; Eschelon Operating Company; Eschelon Telecom, Inc.; Eschelon Telecom of Minnesota, Inc.; Eschelon Telecom of Washington, Inc.; Eschelon Telecom of Colorado, Inc.; Eschelon Telecom of Nevada, Inc.; Eschelon Telecom of Utah, Inc.; Eschelon Telecom of Oregon, Inc.; and Eschelon Telecom of Arizona, Inc.
4.15+	Supplemental Indenture dated November 29, 2004 by and among Eschelon Operating Company, the guarantors party thereto and The Bank of New York Trust Company, N.A., as Trustee.
4.16+	Supplemental Indenture dated December 31, 2004 by and among Eschelon Operating Company, the guarantors party thereto and The Bank of New York Trust Company, N.A., as Trustee.
4.17+	Supplemental Indenture dated January 20, 2005 by and among Eschelon Operating Company, the guarantors party thereto and The Bank of New York Trust Company, N.A., as trustee.
4.18(1)	Redemption Agreement as of October 13, 2004, by and between NTFC Capital Corporation and Eschelon Telecom, Inc.
10.1(4)	Employment Agreement dated May 23, 2005 by and between Eschelon Telecom, Inc. and Richard A. Smith.
10.2*	Employment Offer Letter dated March 7, 2000 from Eschelon Telecom, Inc. to Geoffrey M. Boyd.
10.2.1*	Severance Pay Letter Agreement dated November 14, 2002 by and between Eschelon Telecom, Inc. and Geoffrey M. Boyd.
10.2.2(3)	Amendment dated April 11, 2005 to Employement Offer Letter dated March 7, 2000 from Eschelon Telecom, Inc. to Geoffrey M. Boyd.
10.3*	Change-in-Control Severance Pay Agreement dated April 21, 1999 by and between Advanced Telecommunications, Inc. and David A. Kunde.
10.4*	Employment Offer Letter dated July 19, 1999 from Advanced Telecommunications, Inc. to Steven K. Wachter.
10.5*	Stock Restriction Agreement dated February 7, 2003 between Eschelon Telecom, Inc. and Marvin C. Moses.
10.6*^	Carrier Global Services Agreement dated July 28, 2000 by and between MCI WorldCom Communications, Inc. and Eschelon Telecom, Inc.
10.6.1*^	First Amendment dated June 20, 2001 to Carrier Global Services Agreement dated July 28, 2000 by and between MCI WorldCom Communications, Inc. and Eschelon Telecom, Inc.

Exhibit Number	Description
10.13.5*	Lease For Storage dated March 6, 2000 by and between T.H.S. Northstar Associates Limited Partnership and Fishnet.com, Inc.
10.13.6*	Lease For Storage dated July 11, 1999 by and between T.H.S. Northstar Associates Limited Partnership and Fishnet.com, Inc.
10.13.7	Fifth Amendment dated January 9, 2006 of Lease For Storage dated July 30, 1996 by and between T.H.S. Northstar Associates Limited Partnership and Fishnet.com, Inc.
10.14*	Lease Agreement by and between Duke Realty Limited Partnership and Cady Communications, Inc. dated May 21, 1999.
10.14.1	Amendment dated February 15, 2006 of Lease Agreement by and between Duke Realty Limited Partnership and Cady Communications, Inc. dated May 21, 1999.
10.15*	Lease Agreement between Seattle Telecom LLC and Advanced Telecommunications, Inc. dated December 20, 1999.
10.16*	Office Lease by and between Parkside Salt Lake Corporation and Advanced Telecommunications, Inc. dated December 28, 1999.
10.16.1	Amendment dated April 28, 2005 to Office Lease by and between Parkside Salt Lake Corporation and Advanced Telecommunications, Inc. dated December 28, 1999.
10.17*	Lease by and between Denver Place Associates Limited Partnership and Eschelon Telecom of Colorado, Inc. dated October 24, 2000.
10.18*	Office Lease by and between SOFI-IV SIM Office Investors II, Limited Partnership and Advanced Telecommunications, Inc. dated December 19, 1999.
10.18.1*	First Amendment dated March 17, 2003 to Lease by and between SOFI-IV SIM Office Investors II, Limited Partnership and Eschelon Telecom, Inc. dated December 19, 1999.
10.18.2	Second Amendment dated July 18, 2005 to Lease by and between SOFI-IV SIM Office Investors II, Limited Partnership and Eschelon Telecom, Inc. dated December 19, 1999.
10.19*	Lease by and between Alco Investment Company and Advanced Telecommunications, Inc. dated November 19, 1999.
10.20+	Stock Purchase Agreement dated October 13, 2004, by and between Eschelon Telecom, Inc. and Advanced TelCom Group, Inc.
10.20.1	Amendment to Stock Purchase Agreement dated as of December 30, 2004 (related to Exhibit 10.20)
10.21+	Asset Purchase Agreement dated October 13, 2004 by and between GE Business Productivity Solutions, Inc. and Eschelon Telecom, Inc.
10.22(5)	Lease Agreement by and between Hartmann Limited Partnership & William Ludwig Hartmann Marital Trust and Advanced TelCom, Inc. dated August 18, 2000.
10.23(5)	Lease Agreement by and between Advanced TelCom, Inc. and 200 South Virginia Investments, LLC dated July 16, 1999.
10.23.1(5)	First Amendment to Lease Agreement by and between Advanced TelCom, Inc. and 200 South Virginia Investments, LLC dated January 6, 1999.
10.23.2(5)	Second Amendment to Lease Agreement by and between Advanced TelCom, Inc. and 200 South Virginia Investments, LLC dated August 1, 2001.
10.23.3(5)	Third Amendment to Lease Agreement by and between Advanced TelCom, Inc. and 200 South Virginia Investments, LLC dated April 1, 2004.
10.23.4(5)	Fourth Amendment to Lease Agreement by and between Advanced TelCom, Inc. and 200 South Virginia Investments, LLC dated September 2004.
10.24(5)	Triple-Net Lease Agreement by and between Sunwest Properties II, LLC and Eschelon Telecom, Inc. dated March 11, 2005.
10.25(5)	Standard Industrial/Commercial Single-Tenant Lease—Net by and between Courthouse Square, LLC and Advanced TelCom Group, Inc. dated January 29, 1999.

^^ Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company's Application Requesting Confidential Treatment under Rule 406 of the Securities Act, filed on July 7, 2005.

(1) Incorporated herein by reference to Eschelon Telecom, Inc. Annual Report on Form 10-K as filed with the Commission on March 31, 2005.

(2) Incorporated herein by reference to Eschelon Telecom, Inc. Registration Statement on Form S-1/A, No. 333-124703 as filed with the Commission on July 8, 2005.

(3) Incorporated herein by reference to Eschelon Telecom, Inc. Current Report on Form 8-K as filed with the Commission on April 18, 2005.

(4) Incorporated herein by reference to Eschelon Telecom, Inc. Current Report on Form 8-K as filed with the Commission on May 27, 2005.

(5) Incorporated herein by reference to Eschelon Telecom, Inc. Registration Statement on Form S-1, No. 333-124703 as filed with the Commission on May 6, 2005.

Eschelon Telecom, Inc.

Schedule II—Valuation and Qualifying Accounts

Years Ended December 31, 2003, 2004 and 2005

(Dollars in thousands)

	Balance at Beginning of Year	Additions Charged to Costs and Expenses	Less Deductions	Balance Acquired Through Acquisition on December 31, 2004	Balance at End of Year
Allowance for Doubtful Accounts Receivable:					
2003	$ 2,018	$ 1,033	$ (2,312)	$ —	$ 739
2004	739	1,567	(1,894)	405	817
2005	817	2,338	(2,663)	—	492

	Balance at Beginning of Year	Additions Charged to Costs and Expenses	Less Deductions	Balance Acquired Through Acquisition on December 31, 2004	Balance at End of Year
Valuation Allowance for Deferred Income Tax Assets:					
2003	$ 38,482	$ 6,279	$ —	$ —	$ 44,761
2004	44,761	1,378	—	—	46,139
2005	46,139	11,661	—	—	57,800

Eschelon Telecom, Inc.

Consolidated Financial Statements

Years Ended December 31, 2003, 2004 and 2005

Index

Eschelon Telecom, Inc.

Consolidated Balance Sheets

(Dollars in Thousands, Except per Share Amounts)

	December 31,	
	2004	2005
Assets		
Current assets:		
Cash and cash equivalents	$ 26,435	$ 26,062
Restricted cash	722	996
Available-for-sale securities	6,194	4,760
Accounts receivable, net of allowance for doubtful accounts of $817 and $492, respectively	18,941	22,996
Other receivables	2,976	3,052
Inventories	2,873	2,927
Prepaid expenses	2,410	2,294
Total current assets	60,551	63,087
Property and equipment, net	102,849	126,452
Other assets	1,985	1,506
Goodwill	38,776	7,168
Intangible assets, net	32,958	33,333
Total assets	$ 237,119	$ 231,546
Liabilities and stockholders' equity (deficit)		
Current liabilities:		
Accounts payable	$ 13,801	$ 16,400
Accrued telecommunication costs	2,190	4,227
Accrued office rent	2,336	2,035
Accrued interest expense	4,070	2,646
Other accrued expenses	5,998	5,485
Deferred revenue	7,300	7,921
Accrued compensation expenses	3,588	2,809
Capital lease obligations, current maturities	1,629	2,430
Total current liabilities	40,912	43,953
Long-term liabilities:		
Other long-term liabilities	630	251
Capital lease obligations, less current maturities	2,824	2,964
Notes payable	137,778	92,125
Total liabilities	182,144	139,293
Series A convertible preferred stock, $0.01 par value per share; 100,000,000 shares authorized and 77,526,136 shares issued and outstanding on December 31, 2004	48,155	—
Series B convertible preferred stock, $0.01 par value per share; 25,000,000 shares authorized and 20,000,000 shares issued and outstanding on December 31, 2004	15,000	—
Stockholders' equity (deficit):		
Common stock, $0.01 par value per share; 200,000,000 shares authorized; issued and outstanding shares—351,134 shares on December 31, 2004 and 14,634,279 shares on December 31, 2005	4	146
Additional paid-in capital	115,876	248,199
Accumulated other comprehensive income	30	56
Accumulated deficit	(124,056)	(155,047)
Deferred compensation	(34)	(1,101)
Total stockholders' equity (deficit)	(8,180)	92,253
Total liabilities and stockholders' equity (deficit)	$ 237,119	$ 231,546

See accompanying notes.

Eschelon Telecom, Inc.

Consolidated Statements of Stockholders' Equity (Deficit)

(Dollars in Thousands)

	Common Stock		Additional Paid-In	Accumulated Other Comprehensive	Accumulated	Deferred	
	Shares	Amount	Capital	Income	Deficit	Compensation	Total
Balance at December 31, 2002	117,307	$ 1	$ 123,502	$ —	$ (107,961)	$ —	$ 15,542
Forfeiture of common stock after corporate restructuring	(63)	—	—	—	—	—	—
Accumulated dividends in connection with preferred stock	—	—	(3,426)	—	—	—	(3,426)
Fees associated with 2002 sale of preferred stock	—	—	(70)	—	—	—	(70)
Issuance of restricted common stock	183,399	2	122	—	—	(124)	—
Stock options exercised	28,290	—	19	—	—	—	19
Amortization of deferred compensation	—	—	—	—	—	70	70
Net loss for the year	—	—	—	—	(17,206)	—	(17,206)
Balance at December 31, 2003	328,933	3	120,147	—	(125,167)	(54)	(5,071)
Accumulated dividends in connection with preferred stock	—	—	(3,435)	—	—	—	(3,435)
Series A convertible preferred stock repurchase	—	—	(857)	—	—	—	(857)
Issuance of restricted common stock	10,358	—	14	—	—	—	14
Stock options exercised	11,843	1	7	—	—	—	8
Unrealized gain on available-for-sale securities	—	—	—	30	—	—	30
Amortization of deferred compensation	—	—	—	—	—	20	20
Net income for the year	—	—	—	—	1,111	—	1,111
Balance at December 31, 2004	351,134	4	115,876	30	(124,056)	(34)	(8,180)
Accumulated dividends in connection with preferred stock	—	—	(2,648)	—	—	—	(2,648)
Issuance of restricted common stock	9,350	—	27	—	—	—	27
Stock options exercised	78,457	1	59	—	—	—	60
Restricted stock forfeited	(494)	—	—	—	—	—	—
Deferred compensation related to stock options granted	—	—	2,003	—	—	(2,003)	—
Amortization of deferred compensation	—	—	—	—	—	936	936
Unrealized gain on available-for-sale securities	—	—	—	26	—	—	26
Convert preferred stock to common stock	8,838,689	88	65,869	—	—	—	65,957
Sale of common stock, net of fees	5,357,143	53	67,013	—	—	—	67,066
Net loss for the year	—	—	—	—	(30,991)	—	(30,991)
Balance at December 31, 2005	14,634,279	$ 146	$ 248,199	$ 56	$ (155,047)	$ (1,101)	$ 92,253

See accompanying notes.

(Dollars in Thousands, Except per Share Amounts)

1. Summary of Significant Accounting Policies

Organization

Eschelon Telecom, Inc. (the Company) is a competitive local exchange carrier, headquartered in Minneapolis, Minnesota. The Company was incorporated in Delaware in 1996 under the name Advanced Telecommunications, Inc. The Company is a facilities-based provider of integrated voice and data communications services to small and medium-sized businesses in 19 markets in the western United States. The Company offers voice and data services, which are referred to as network services. The Company also sells, installs and maintains business telephone and data systems and equipment referred to as business telephone systems.

The Company offers the following products and services:

Voice Services	Data Services	Business Telephone Systems
Local and Long Distance	Broadband Internet Access	Customer Premise Telephone Equipment and Accessories
Vertical Features	Dedicated Internet Access	Data Communications Equipment
Advanced Call Management	Dial-up Internet Access	Voice Mail Systems
Other Enhanced Services	E-Mail	IP Phone Systems
	Web-Hosting	After Market Maintenance and Upgrade Contracts

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Reclassifications

Certain prior year items have been reclassified to conform to current year presentation.

Cash and Cash Equivalents

The Company considers all highly liquid investments with maturities of three months or less at the time of purchase to be cash equivalents. Cash equivalents are carried at cost which approximates market value. On December 31, 2004 and 2005, the Company had investments in securities of $17,051 and $21,728, respectively, which are included in cash and cash equivalents.

Restricted Cash

In August 2004, a Nevada state court entered a judgment against the Company in the amount of $376 plus costs. The Company appealed the judgment and was required to hold $577 as restricted cash. Also in 2004, the Company held $75 for collateral on bank credit cards and $70 for performance bonds as restricted cash.

(Dollars in Thousands, Except per Share Amounts)

1. Summary of Significant Accounting Policies (Continued)

Property and equipment consists of the following:

	December 31,	
	2004	2005
Vehicles	$ 590	$ 1,375
Office furniture and equipment	16,746	18,229
Computer equipment and software	34,534	41,897
Leasehold improvements	19,504	23,765
Switching and data equipment and software	99,736	134,661
	171,110	219,927
Less accumulated depreciation	(68,261)	(93,475)
	$ 102,849	$ 126,452

Total depreciation expense was $19,270, 18,684 and 25,565 for the years ended December 31, 2003, 2004 and 2005, respectively.

The Company reviews all long-lived assets for impairment in accordance with SFAS No. 144, *Accounting for the Impairment and Disposal of Long-Lived Assets*. Under SFAS No. 144, impairment losses are recorded on long-lived assets used in operations when events and circumstances indicate the assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amounts of those assets.

Goodwill and Other Intangible Assets

Goodwill is tested at least annually for impairment at the reporting unit level. If the implied fair value of a reporting unit is less than the carrying amount, an impairment charge is recognized. In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*, management completed its annual impairment test in the fourth quarter of 2004 and 2005 and determined that goodwill had not been impaired.

On September 15, 2005, the Company redeemed 35% of its outstanding 8 3/8% senior second secured notes due March 15, 2010. In connection with the redemption, the Company wrote off a proportionate amount of the associated debt issuance costs resulting in a net decrease to intangible assets and a corresponding increase to interest expense of $2,579.

The following table represents other intangible assets by category and accumulated amortization as of December 31, 2005 and 2004:

2005	Gross Carrying Amount	Accumulated Amortization	Net	Estimated Life Range (in Years)
Customer installation costs	$ 77,650	$ 52,034	$ 25,616	4
Debt issuance costs	5,666	1,077	4,589	7
Customer relationships	3,820	955	2,865	4
Non-compete agreements	300	100	200	3
Developed technology	94	31	63	3
Total	87,530	54,197	33,333	4(1)

(Dollars in Thousands, Except per Share Amounts)

1. Summary of Significant Accounting Policies (Continued)

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are initially recorded at fair value upon the sale of products or services to customers. Significant estimates are required in determining the allowance for doubtful accounts receivable. The Company considers two primary factors in determining the proper level of allowance, including historical collections experience and the aging of the accounts receivable portfolio. The allowance for doubtful accounts is based on the best facts available to the Company and is reevaluated and adjusted as additional information is received.

Use of Estimates

The preparation of financial statements in conformity with United States generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Accumulated Other Comprehensive Income

Accumulated other comprehensive income represents unrealized gains on available-for-sale securities, net of tax. Accumulated other comprehensive income is presented in the consolidated statements of stockholders' equity (deficit).

The components of accumulated other comprehensive income are as follows:

Balance, December 31, 2003	$—
Net unrealized gain (loss) on financial instruments	30
Balance, December 31, 2004	30
Net unrealized gain (loss) on financial instruments	26
Balance, December 31, 2005	$ 56

Income Taxes

The Company accounts for income taxes under the liability method in accordance with SFAS No. 109, *Accounting for Income Taxes*. Deferred tax liabilities are recognized for temporary differences that will result in taxable amounts in future years. Deferred tax assets are recognized for deductible temporary differences and tax operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using the enacted tax rates expected to apply to taxable income in the periods in which the deferred tax asset or liability is expected to be realized or settled. The Company assesses the likelihood that its deferred tax assets will be recovered from future taxable income and the Company records a valuation allowance to reduce its deferred tax assets to the amounts it believes to be realizable. The Company has concluded that a full valuation allowance against its deferred tax assets was appropriate.

Net Income (Loss) Per Share

Basic earnings per share is computed based on the weighted average number of common shares outstanding. Diluted earnings per share is computed based on the weighted average number of common

1. Summary of Significant Accounting Policies (Continued)

costs and spoilage be recognized as current-period charges. This statement also requires that fixed production overhead be allocated to inventory costs beginning in fiscal 2006. The Company does not expect that the adoption of this statement will have a material impact on its consolidated financial statements.

In December 2004, as amended on April 14, 2005, the FASB issued SFAS No. 123R, *Share-Based Payment: an amendment of FASB Statement No. 123 and FASB Statement No. 95*, which requires all share-based payments to employees, including grants of employee stock options, to be recognized in the income statement based on their fair values. Prior to SFAS No. 123R, only certain pro forma disclosures of fair value were required. SFAS 123R must be adopted no later than the beginning of the first fiscal year beginning after June 15, 2005. The Company adopted SFAS 123R on January 1, 2006.

The Company will use the modified prospective method in which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS 123R for all share-based payments granted after the effective date and (b) based on the requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. The Company is evaluating the potential impact on its financial statements.

In December 2004, the FASB issued SFAS No. 153, *Exchanges of Nonmonetary Assets*. SFAS No. 153 addresses the measurement of exchange of nonmonetary assets. SFAS No. 153 eliminates the exception from fair value measurement for nonmonetary exchanges of similar productive assets in paragraph 21(b) of APB Opinion No. 29, *Accounting for Nonmonetary Transactions*, and replaces it with an exception for exchanges that do not have commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange. SFAS No. 153 is effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005. The Company will adopt the provisions of SFAS No. 153 on January 1, 2006. The adoption of this statement will not have a material impact on the Company's consolidated financial statements.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections*. SFAS No. 154 replaces Accounting Principles Board Opinion No. 20, *Accounting Changes*, and FASB Statement No. 3, *Reporting Accounting Changes in Interim Financial Statements*, and requires the direct effects of accounting principle changes to be retrospectively applied. The existing guidance with respect to accounting estimate changes and corrections of errors is carried forward in SFAS No. 154. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005.

2. Acquisitions

Advanced TelCom, Inc.

On October 13, 2004 the Company entered into an agreement to purchase all of the outstanding common stock of Advanced TelCom, Inc. (ATI) for $45,543, net of cash acquired. The transaction closed on December 31, 2004. The closing of this transaction gives the Company a leading market position among competitive local exchange carriers within the Pacific Northwest, acquiring more than 18,000 business customers that utilize approximately 124,000 access lines. The Company expects to benefit from operating synergies from consolidating ATI's operations into its existing business.

(Dollars in Thousands, Except per Share Amounts)

2. Acquisitions (Continued)

ATI's consolidated financial information included in the 2003 pro forma results represents the period from May 15, 2003 (the date on which ATI emerged from bankruptcy) through December 31, 2003.

General Electric Business Productivity Solutions

On October 13, 2004 the Company entered into an agreement with General Electric Capital Corporation to purchase substantially all other assets of General Electric Business Productivity Solutions, Inc. (GE BPS) for $100. The transaction closed on March 31, 2005 and was be accounted for as a discontinued operation. GE BPS constitutes a group of assets that can be clearly distinguished operationally and for financial reporting purposes from the rest of the Company. Management has determined that the group of assets does not fit the Company's future business model and committed to sell the net assets with an original carrying value of $216, which approximated the fair value less cost to sell the group of assets. At March 31, 2005 the Company determined that the plan of sale criteria in SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, had been met and classified the assets and liabilities accordingly on the balance sheet.

On October 1, 2005, the Company sold its discontinued operation for $320, net of sales costs incurred. The sale resulted in gain of $326 and is presented in the consolidated statement of operations.

3. Investments

At December 31, 2005, available-for-sale securities consist of the following:

	Cost Basis	Unrealized Holding Gains	Fair Value
U.S. government agencies	$ 1,961	$ 26	$ 1,987
Corporate obligations	2,743	30	2,773
Total available-for-sale securities	$ 4,704	$ 56	$ 4,760

At December 31, 2004, available-for-sale securities consists of the following:

	Cost Basis	Unrealized Holding Gains	Fair Value
U.S. government agencies	$ 2,300	$ 11	$ 2,311
Corporate obligations	3,864	19	3,883
Total available-for-sale securities	$ 6,164	$ 30	$ 6,194

All debt securities as of December 31, 2004 and 2005, have maturities of six months or less.

4. Notes Payable

In June 2002, the Company entered into a negotiated debt restructuring, which included the reduction of outstanding debt under its senior secured credit facility from $139,293 to $57,062. In the restructuring, certain lenders with outstanding principal and interest due of $65,778 chose to receive $12,229 in cash to cancel all liabilities, as a result of which the Company recorded a pre-tax gain of $53,549. In accordance

(Dollars in Thousands, Except per Share Amounts)

4. Notes Payable (Continued)

the Company's initial public offering of the Company common stock (see Note 8) were used to redeem the notes.

The carrying value of the notes is comprised of the following as of December 31:

	2004	2005
Principal amount due	$ 165,000	$ 107,250
Discount on notes payable	(27,222)	(15,125)
	$ 137,778	$ 92,125

The accreted value of notes payable as of December 31 of the following years is:

2006	$ 95,033
2007	98,332
2008	102,076
2009	106,326
March 15, 2010	107,250

The carrying amount, net of discount, of the Company's debt instruments in the consolidated balance sheets at December 31, 2004 and 2005 approximates fair value.

5. Commitments and Contingencies

In April 2003, the Company entered into a five-year agreement with MCI to purchase colocation/LIS transport services. The agreement requires that the Company maintain monthly minimums as follows:

April 2005—March 2006	$ 88/month
April 2006—March 2007	$ 93/month
April 2007—March 2008	$ 97/month

The Company will pay an underutilization charge for any amounts billed under the monthly minimum.

In 2000, the Company entered into an amendment of an earlier Master Purchase and Services agreement with Nortel Networks, Inc. (Nortel Networks). Under the amendment, the Company committed to purchase and/or license $100,000 of Nortel Networks' equipment or services. However, the Company is confident that, due to Nortel Networks' discontinuance of certain product lines contemplated in the Amended Master Purchase and Services agreement, neither party will be held to the conditions of the contract.

Legal Proceedings

In August 2004, a Nevada state court entered a judgment against the Company for intentionally interfering with a former salesperson's economic relationship with his new employer in the amount of $376 plus costs. The Company had reason to believe the former employee was violating his non-solicitation agreement with the Company. The Company appealed the judgment because, among other reasons, the

(Dollars in Thousands, Except per Share Amounts)

6. Operating and Capital Leases (Continued)

Future minimum lease payments under operating leases with a term in excess of one year as of December 31, 2005 are as follows:

2006	$ 4,929
2007	4,661
2008	4,526
2009	3,590
2010	2,155
Thereafter	4,272
	$ 24,133

The Company also leases certain furniture and equipment under capital leases. The cost of furniture and equipment in the accompanying balance sheets includes the following amounts under capital leases:

	December 31,	
	2004	2005
Cost	$ 6,020	$ 9,207
Less accumulated depreciation	(782)	(2,507)
	$ 5,238	$ 6,700

Future minimum lease payments required under capital leases together with the present value of the net future minimum lease payments at December 31, 2005 are as follows:

2006	$ 3,011
2007	2,592
2008	664
2009	27
Total minimum lease payments	6,294
Less amount representing interest	(900)
Present value of net minimum payments	5,394
Less current portion	(2,430)
Capital lease obligations, net of current portion	$ 2,964

7. Benefit Contribution Plan

The Company has a defined contribution salary deferral plan covering substantially all employees under Section 401(k) of the Internal Revenue Code. The Company contributes an amount equal to 45 cents for each dollar contributed by each employee up to a maximum of 6% of each employee's compensation. The Company recognized expense for contributions to the plan of $602, $764 and $962 in 2003, 2004 and 2005, respectively.

(Dollars in Thousands, Except per Share Amounts)

8. Capital Stock (Continued)

The following table summarizes the options to purchase shares of the Company's common stock under the Eschelon Telecom, Inc. Stock Option Plan of 2002:

	Shares Available for Grant	Plan Options Outstanding	Weighted Average Exercise Price
Balance at December 31, 2002	1,041,966	—	$ 0.68
Options granted	(786,294)	786,294	0.68
Restricted stock granted	(183,399)	—	0.68
Canceled	65,120	(65,120)	0.68
Exercised	—	(28,290)	0.68
Balance at December 31, 2003	137,393	692,884	0.68
Options granted	(101,984)	101,984	1.35
Canceled	35,921	(35,921)	0.83
Exercised	—	(11,843)	0.69
Balance at December 31, 2004	71,330	747,104	0.77
Additional shares reserved	590,448	—	—
Options granted	(533,536)	533,536	8.24
Restricted stock forfeited	494	—	0.68
Restricted stock granted	(9,350)	—	2.92
Canceled	34,693	(34,693)	3.18
Exercised	—	(78,457)	0.76
Balance at December 31, 2005	154,079	1,167,490	$ 4.12

The following table contains details of the stock options outstanding as of December 31, 2005:

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number Outstanding	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
$0.00 - $10.84	962,162	7.85 years	$ 2.38	521,144	$ 1.66
$10.85 - $21.68	205,328	9.56 years	$ 12.24	41,261	$ 12.23
	1,167,490	8.15 years	$ 4.12	562,405	$ 2.43

Restricted Common Stock

In 2003, the Company granted 183,399 shares of restricted common stock to certain directors and members of management. The Company records compensation expense as the restrictions are removed from the stock. In 2005, the Company granted 9,350 shares of restricted common stock to certain directors. Total compensation expense related to restricted common stock for the years ended December 31, 2003, 2004 and 2005 was $70, $20 and $39, respectively.

(Dollars in Thousands, Except per Share Amounts)

10. Condensed Consolidating Financial Information (Continued)

The following tables present condensed consolidating balance sheets for the years ended December 31, 2004 and 2005 and condensed consolidating statements of operations for the years ended December 31, 2003, 2004 and 2005.

Condensed Consolidating Balance Sheets
As of December 31, 2004

	Eschelon Telecom, Inc.	Eschelon Operating Company	Guarantor Subsidiaries	Eliminations	Consolidated
Assets					
Current assets:					
Cash and cash equivalents	$ 26,332	$ —	$ 103	$ —	$ 26,435
Restricted cash	722	—	—	—	722
Available-for-sale securities	6,194	—	—	—	6,194
Accounts receivable	—	—	18,941	—	18,941
Other receivables	—	—	2,976	—	2,976
Inventories	—	—	2,873	—	2,873
Prepaid expenses	1,227	—	1,183	—	2,410
Total current assets	34,475	—	26,076	—	60,551
Property and equipment, net	82,550	—	20,299	—	102,849
Investment in affiliates	58,998	—	—	(58,998)	—
Other assets	1,042	—	943	—	1,985
Goodwill	—	—	38,776	—	38,776
Intangible assets, net	12,548	7,890	12,520	—	32,958
Total assets	$ 189,613	$ 7,890	$ 98,614	$ (58,998)	$ 237,119
Liabilities and stockholders' equity (deficit)					
Current liabilities:					
Accounts payable	$ 4,314	$ —	$ 9,487	$ —	$ 13,801
Accrued telecommunication costs	—	—	2,190	—	2,190
Accrued office rent	1,722	—	614	—	2,336
Accrued interest expense	—	4,069	1	—	4,070
Other accrued expenses	489	—	5,509	—	5,998
Deferred revenue	—	—	7,300	—	7,300
Accrued compensation expenses	2,172	—	1,416	—	3,588
Capital lease obligation, current maturities	1,526	—	103	—	1,629
Total current liabilities	10,223	4,069	26,620	—	40,912
Long-term liabilities:					
Other long-term liabilities	76	—	554	—	630
Capital lease obligation, less current maturities	2,607	—	217	—	2,824
Notes payable	—	137,778	—	—	137,778
Due to (from) affiliates	227,721	(174,370)	(53,351)	—	—
Total liabilities	240,627	(32,523)	(25,960)	—	182,144
Convertible preferred stock	63,155	—	—	—	63,155
Stockholders' equity (deficit)	(114,169)	40,413	124,574	(58,998)	(8,180)
Total liabilities and stockholders' equity (deficit)	$ 189,613	$ 7,890	$ 98,614	$ (58,998)	$ 237,119

(Dollars in Thousands, Except per Share Amounts)

10. Condensed Consolidating Financial Information (Continued)

Condensed Consolidating Statement of Operations
For the Year Ended December 31, 2003

	Eschelon Telecom, Inc.	Eschelon Operating Company	Guarantor Subsidiaries	Consolidated
Revenue:				
Network services	$ —	$ —	$ 115,482	$ 115,482
Business telephone systems	—	—	25,614	25,614
	—	—	141,096	141,096
Cost of revenue:				
Network services	—	—	45,037	45,037
Business telephone systems	—	—	15,784	15,784
	—	—	60,821	60,821
Gross profit:				
Network services	—	—	70,445	70,445
Business telephone systems	—	—	9,830	9,830
	—	—	80,275	80,275
Operating expenses:				
Sales, general and administrative	35,274	—	30,978	66,252
Depreciation and amortization	16,785	—	13,314	30,099
Total operating expenses	52,059	—	44,292	96,351
Operating income (loss)	(52,059)	—	35,983	(16,076)
Other income (expense)	(669)	(440)	7	(1,102)
Income (loss) before income taxes	(52,728)	(440)	35,990	(17,178)
Income taxes	(28)	—	—	(28)
Net income (loss)	$ (52,756)	$ (440)	$ 35,990	$ (17,206)

(Dollars in Thousands, Except per Share Amounts)

10. Condensed Consolidating Financial Information (Continued)

Condensed Consolidating Statement of Operations
For the Year Ended December 31, 2005

	Eschelon Telecom, Inc.	Eschelon Operating Company	Guarantor Subsidiaries	Consolidated
Revenue:				
Network services	$ —	$ —	$ 201,835	$ 201,835
Business telephone systems	—	—	25,908	25,908
	—	—	227,743	227,743
Cost of revenue:				
Network services	—	—	85,914	85,914
Business telephone systems	—	—	16,139	16,139
	—	—	102,053	102,053
Gross profit:				
Network services	—	—	115,921	115,921
Business telephone systems	—	—	9,769	9,769
	—	—	125,690	125,690
Operating expenses:				
Sales, general and administrative	42,551	—	47,759	90,310
Depreciation and amortization	22,160	—	17,493	39,653
Total operating expenses	64,711	—	65,252	129,963
Operating income (loss)	(64,711)	—	60,438	(4,273)
Other income (expense)	(3,988)	(23,447)	66	(27,369)
Income (loss) before income taxes	(68,699)	(23,447)	60,504	(31,642)
Income taxes	(4)	—	—	(4)
Net income (loss) before discontinued operation	(68,703)	(23,447)	60,504	(31,646)
Income from discontinued operation, net of tax	—	—	655	655
Net income (loss)	$ (68,703)	$ (23,447)	$ 61,159	$ (30,991)

11. Reverse Stock Split

The Company completed a 0.0738-for-one reverse stock split affecting all outstanding shares of common stock on August 2, 2005. All share and per share data have been adjusted to reflect the stock split.

12. Subsequent Events

In January 2006, the Company signed a definitive agreement to acquire Oregon Telecom, Inc., a privately-held competitive services provider based in Salem, Oregon. The Company will pay $20,000 in cash to acquire Oregon Telecom. The transaction is expected to close early in the second quarter of 2006.

Payable in advance and without notice in monthly installments (each equal to one-twelfth of the Annual Rent) on the Commencement Date and on the first day of each calendar month thereafter during the Term.

4. Effective on the Amendment Date, the following is added as Article 32.00:

ARTICLE 32.00 **Additional Premises**

32.01 **"Additional Premises"** means the area on the eleventh floors of the Buildings as indicated on Exhibit 1 attached hereto, hereby deemed to contain 46,664 square feet. For the purpose of calculating Occupancy Costs, 31,611 square feet of the Additional Premises is in the Investors Building, shown on Exhibit 2 attached hereto and 15,053 square feet of the Additional Space is in the Roanoke Building, shown on Exhibit 3 attached hereto.

32.02 **"Term"** The Term on the Additional Premises shall commence on the "Additional Premises Commencement Date" which shall be April 1, 2006, subject to the substantial completion of Tenant Improvements set forth in Article 33.00 of this Lease and terminate on the same day of the Premises.

32.03 **"Rent"** Tenant shall pay to Landlord as Annual Rent for the Additional Premises, the following:

Term	SF	Rate	Annual Rent	Monthly Rent
4-1-06 – 3-31-07	46,664	$ 9.10	$ 424,642.40	$ 35,386.87
4-1-07 – 3-31-08	46,664	$ 9.25	$ 431,642.00	$ 35,970.17
4-1-08 – 3-31-09	46,664	$ 3.35	$ 436,308.40	$ 36,359.03
4-1-09 – 3-31-10	46,664	$ 9.50	$ 443,308.00	$ 36,942.33
4-1-10 – 3-31-11	46,664	$ 9.65	$ 450,307.60	$ 37,525.63
4-1-11 – 3-31-12	46,664	$ 9.75	$ 454,974.00	$ 37,914.50
4-1-12 – 11-31-12	46,664	$ 9.90	$ 461,973.60	$ 38,497.80
12-1-12 – 5-31-13	46,664	$ 9.25	$ 431,642.00	$ 35,970.17

Payable in advance and without notice in monthly installments (each equal to one-twelfth of the Annual Rent) on the Additional Premises Commencement Date and on the first day of each calendar month thereafter during the Term.

32.04 **"Occupancy Costs"** Tenant shall pay to Landlord, at the times and in the manner provided in Article 4.06 of the Lease, the Occupancy Costs for the Additional Premises, determined for the Building in which the Additional Premises are located using Exhibit B-1 for Roanoke portion of Additional Premises and Exhibit B-2 for Investors portion of Additional Premises.

5. Effective on the Amendment Date the following is added as Article 33.00 of the Lease:

ARTICLE 33.00 **Landlord Work**

33.01 **"Landlord Work"** Prior to the Additional Premises Commencement Date, Landlord shall construct the Additional Premises in accordance with the plans and specifications prepared by Tenant and approved by Landlord, ("the Plans") which when approved shall be referenced as Exhibit 4 of this Amendment. Landlord shall contribute an amount equal to $18.00 per square foot leased ($839,952.00) to offset the cost of the tenant improvements below the ceiling and Tenants occupancy of the Additional Premises "Tenant Improvement Allowance". Landlord, at its expense, will install the ceiling to accommodate the Plans including: a 2x2 ceiling grid, 2x2 acoustic ceiling tiles, HVAC diffusers, sprinkler

IN WITNESS OF THIS LEASE Landlord and Tenant have properly executed it as of the date set out on page one.

LANDLORD:

ST. PAUL PROPERTIES, INC.

By: /s/ R. William Insera

Its: V.P.

1-18-06
Date Executed

TENANT:

By: /s/ Michael A. Donahue.

Its: VP Finance & Treasurer

Michael A. Donahue
Please Print Name

12/30/05
Date Executed

Witness to the signature of Tenant if not incorporated.

EXHIBIT 2

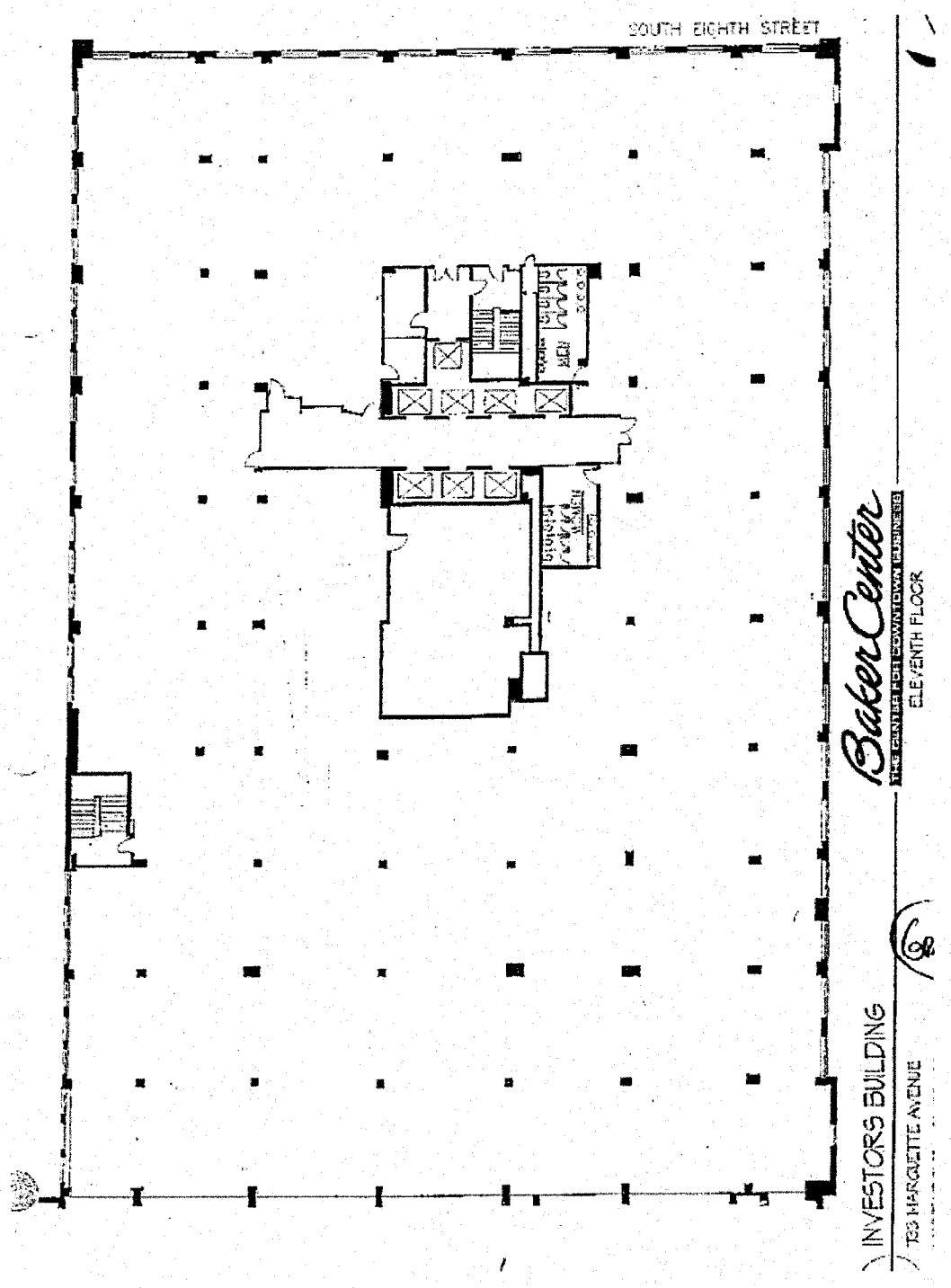

SOUTH EIGHTH STREET
Baker Center
THE CENTER FOR DOWNTOWN BUSINESS
ELEVENTH FLOOR
INVESTORS BUILDING
735 MARQUETTE AVENUE

EXHIBIT 10.13.7

5TH AMENDMENT OF LEASE FOR STORAGE

THIS 5th AMENDMENT OF LEASE FOR STORAGE ("5th Amendment") is made on January 9, 2006, between **T.H.S. Northstar Associates Limited Partnership**, a Minnesota limited partnership ("Landlord"), whose address 625 Marquette Avenue South, Minneapolis, Minnesota 55402 and **Eschelon Telecom of Minnesota, Inc.**, a Minnesota corporation (f/k/a Cady Communications, Inc., f/k/a Fishnet.com. Inc.) ("Tenant"), whose address is 730 Second Avenue South, Suite 900, Minneapolis, Minnesota 55402.

RECITALS

This 5th Amendment is based upon the following recitals:

A. Landlord and Fishnet.com, Inc., a Minnesota corporation ("Fishnet.com"), entered into a Lease for Storage dated July 30, 1996 ("Lease"), for certain premises known as Suite #SB-52 ("Premises"), containing approximately 840 rentable square feet, at the sub-basement level of the Northstar Center ("NStar Building"), 110 Second Avenue South, Minneapolis, Minnesota 55402.

B. Landlord and Fishnet.com amended the Lease as follows:

(1) 1st Amendment of Lease for Storage dated March 10, 1998, which, among other matters, extended the Lease Term to March 31, 2003 ("1st Extension");

(2) 2nd Amendment of Lease for Storage dated March 27, 1998, which, among other matters, expanded the Premises to encompass Suite #SB-50C ("1st Expansion Space") at the sub-basement level of the Northstar West Building, 625 Marquette Avenue South, Minneapolis, Minnesota 55402 ("NSWest Building") (incorrectly identified in the 2nd Amendment as being located in the NStar Building), containing approximately 630 rentable square feet; and

(3) 3rd Amendment of Lease for Storage dated April 30, 1999, which, among other matters, (a) further extended the Lease Term to June 30, 2005 ("2nd Extension") and (b) further expanded the Premises to encompass (i) Suite #SB-50 ("2nd Expansion Space") at the sub-basement level of the NStar Building, containing approximately 942 rentable square feet, and (ii) Suite #SB-50 ("3rd Expansion Space") at the sub-basement level of the NSWest Building, containing approximately 666 rentable square feet; and

(4) 4th Amendment of Lease for Storage dated October 31, 2000, which further expanded the Premises to encompass (i) Suite #SB-60 ("4th Expansion Space") at the sub-basement level of the NStar Building, containing approximately 599 rentable square feet, and (ii) Suite #SB-64 ("5th Expansion Space") at the sub-basement level of the NStar Building, containing approximately 940 rentable square feet (the Lease and the 1st, 2nd, 3rd and 4th Amendments, collectively, "Lease as amended").

C. Tenant is the successor to the tenant's interest of Fishnet.com under the Lease as amended by operation of law, being the surviving entity of an April 28, 2000, merger between Fishnet.com and Cady Communications, Inc. (n/k/a Eschelon Telecom of Minnesota, Inc.).

D. Landlord and Tenant desire to further amend the Lease as amended to further extend the Term of the Lease, modify the Rent and otherwise amend the Lease as amended accordingly.

Witnesses:

By: /s/ Michele Speranza-di Forza
Name: Michele Speranza-di Forza

By: _____
Name: _____

Tenant:
ESCHELON TELECOM OF MINNESOTA, INC., a Minnesota corporation

By: /s/ Michael A. Donahue
Name: Michael A. Donahue
Its: VP Finance & Treasurer

By: _____
Name: _____
Its: _____

Witnesses:

By: /s/ Jean M. Wilson
Name: Jean M. Wilson

By: _____
Name: _____

Landlord:
T.II.S. NORTHSTAR ASSOCIATES LIMITED PARTNERSHIP, a Minnesota limited partnership
By: TrizecHahn Northstar LLC, a Delaware limited liability company, as sole general partner

By: /s/ Cynthia K. Yott
Name: Cynthia K. Yott
Its: Vice President & Assistant Secretary

By: /s/ Stephen E. Budorick
Name: Stephen E. Budorick
Its: Vice President

4. Minimum Annual Rent. During the Extended Lease Term, the Minimum Annual Rent and the Monthly Rental Installments of Base Rent shall be calculated based on the following per annum and per rentable square foot rates:

Base Rental Payments

Lease Period	Per Annum Base Rent Per Rentable Square Foot	Per Annum Base Rent Per Rentable Square Foot If Option A Is Applicable	Per Annum Base Rent Per Rentable Square Foot If Option B Is Applicable
February 1, 2007 – February 28, 2007	$ 0.00	$ 0.00	$ 0.00
February 1, 2007 – January 31, 2009	$ 9.80	$ 9.80	$ 10.05
February 1, 2009 – January 31, 2010	$ 10.05	$ 10.05	$ 10.30
February 1, 2010 – January 31, 2011	$ 10.30	$ 10.30	$ 10.55
February 1, 2011 – February 28, 2012	$ 10.55	$ 10.55	$ 10.80

5. Basic Lease Provisions and Definitions. (a) During the Extended Lease Term, the following portions of Section 1.01 of the Original Lease are hereby deleted and, in lieu thereof, the following are instead substituted:

Section 1.01B. The term "**Rentable Area**" shall mean the number of rentable square feet comprising the Leased Premises as of February 1, 2007, after either (a) Tenant's delivery of the Commitment Letter (defined below) or (b) implementation of Plan A which shall consist of 19,652 square feet of office and 9,171 square feet of warehouse for a total of 28,823 square feet or Plan B which shall consist of 20,926 square feet of office and 8,069 square feet of warehouse for a total of 28,995, as the case may be (and as each is defined below). Landlord shall use commercially reasonable standards, consistently applied, in determining the Rentable Area and the rentable area of the Building. Landlord's determination of Rentable Area shall conclusively be deemed correct for all purposes hereunder.

Section 1.01D and E. The terms "Minimum Annual Rent" and "Monthly Rental Installment" shall be based upon the rates set forth in Section 4 above.

Section 1.01G. The term "Lease Term" shall mean the "Extended Lease Term" as set forth in Section 3 above.

Section 1.01K. The term "Broker" shall mean Todd Braufman of Equis Corporation.

(b) The following parts of the Original Lease are hereby deleted and, the lieu thereof, the following is instead substituted:

7. Landlord's Insurance. The following is hereby added as an additional Section 9.03:

During the Lease Term, Landlord shall maintain the following types of insurance, in the amounts specified below (the cost of which shall be included in Operating Expenses): (a) commercial property insurance policy covering the Building (at its full replacement cost), but excluding Tenant's personal property; (b) commercial general public liability insurance covering Landlord for claims arising out of liability for bodily injury, death, personal injury, advertising injury and property damage occurring in and about the Building and otherwise resulting from any acts and operations of Landlord, its agents and employees; (c) rent loss insurance; and (d) any other insurance coverage deemed appropriate by Landlord or required by Landlord's lender. All of the coverages described in (a) through (d) shall be determined from time to time by Landlord, in its sole discretion. All insurance maintained by Landlord shall be in addition to and not in lieu of the insurance required to be maintained by the Tenant.

8. Waiver of Subrogation. Section 8.02 of the Original Lease is hereby deleted and, in lieu thereof, the following is instead substituted:

Notwithstanding anything to the contrary in this Lease, Landlord and Tenant mutually waive their respective rights of recovery against each other and each other's officers, directors, constituent partners, members, agents and employees, and Tenant further waives such rights against (a) each lessor under any ground or underlying lease encumbering the Property and (b) each lender under any mortgage or deed of trust or other lien encumbering the Property (or any portion thereof or interest therein), to the extent any loss is insured against or required to be insured against under this Lease, including, but not limited to, losses, deductibles or self-insured retentions covered by Landlord's or Tenant's commercial property, general liability, automobile liability or workers' compensation policies described above. This provision is intended to waive, fully and for the benefit of each party to this Lease, any and all rights and claims that might give rise to a right of subrogation by any insurance carrier. Each party shall cause its respective insurance policy(ies) to be endorsed to evidence compliance with such waiver.

9. Late Charges and Default Interest. Section 3.04 of the Original Lease is hereby deleted and, in lieu thereof, the following is instead substituted:

Tenant acknowledges that Landlord shall incur certain additional unanticipated administrative and legal costs and expenses if Tenant fails to timely pay any payment required hereunder. Therefore, in addition to the other remedies available to Landlord hereunder, if any payment required to be paid by Tenant to Landlord hereunder shall not be paid within five (5) days of the date such payment was due, Tenant shall pay a late fee equal to five percent (5%) of the delinquent payment. If a payment remains delinquent beyond the expiration of any applicable cure period, the delinquent amount shall bear interest (from the date on which the cure period expires through the date on which the delinquency is paid, in full, inclusive of interest) at the rate of five percent (5%) per annum above the "prime" or "reference" or "base" rate (on a per annum basis) of interest publicly announced as such, from time to time, by JPMorgan Chase Bank N.A. (the **"Default Rate"**). The various rights, remedies and elections of Landlord reserved, expressed or contained herein are cumulative and no one of them shall be deemed exclusive of the others as of such other rights, remedies, options or elections as are now or may hereafter be conferred upon Landlord by law.

Notice") not less than six (6) months, nor more than nine (9) months, prior to the expiry date of the original Term (or the first Renewal Term, as the case may be); and if Tenant fails to timely deliver the Renewal Notice to Landlord, then Tenant shall automatically be deemed to have irrevocably waived and relinquished the then-applicable Renewal Option. If Tenant fails to timely exercise the first Renewal Option, then Tenant shall have no further Renewal Option.

16.12.2 **"Fair Market Rent"** shall be determined by Landlord, in its sole, but good faith, discretion based upon the annual base rental rates then being charged (as of the date on which Tenant delivers the then-applicable Renewal Notice) in the industrial submarket sector of the geographic area where the Building is situated for comparable space and for a lease term commencing on or about the commencement date of the then-applicable Renewal Term and equal in duration to the then-applicable Renewal Term, taking into consideration: the geographic location, quality and age of the building; the location and configuration of the relevant space within the applicable building; the extent of service to be provided to the proposed tenant thereunder; applicable distinctions between "gross" lease and "net" leases; the creditworthiness and quality of Tenant; leasing commissions; free rent; tenant improvements allowances; moving allowances; and any other relevant term or condition in making such evaluation, as reasonably determined by Landlord. Landlord shall notify Tenant of Landlord's determination of Fair Market Rent for the then-applicable Renewal Term, in writing (the **"Base Rent Notice"**) within fifteen (15) business days after receiving the Renewal Notice.

16.12.3 Tenant shall then have fifteen (15) business days after Landlord's delivery of the Base Rent Notice in which to advise Landlord, in writing (the **"Base Rent Response Notice"**) whether Tenant (i) is prepared to accept the Fair Market Rent established by Landlord in the then-applicable Base Rent Notice and proceed to lease the Premises, during the applicable Renewal Term, at that Fair Market Rent; or (ii) elects to withdraw and revoke its Renewal Notice, whereupon the then-applicable Renewal Option shall automatically be rendered null and void; or (iii) elects to contest Landlord's determination of Fair Market Rent. In the event that Tenant fails to timely deliver the Base Rent Response Notice, then Tenant shall automatically be deemed to have elected (i) above. Alternatively, if Tenant timely elects (ii), then this Lease shall expire on the original expiry date of the initial Term or the expiry date of the initial Renewal Term, as the case may be. If, however, Tenant timely elects (iii), then the following provisions shall apply:

16.12.3.1 The Fair Market Rent shall be determined by either the Independent Brokers or the Determining Broker, as provided and defined below.

16.12.3.2 Within ten (10) business days after Tenant delivers its Base Rent Response Notice, electing (iii), each of Landlord and Tenant shall advise the other, in writing (the **"Arbitration Notice"**) of both (i) the identity of the individual that each of Landlord and Tenant, respectively, is designating to act as Landlord's or Tenant's, as the case may be, duly authorized representative for purposes of the determination of Fair Market Rent pursuant to this Section 16.12.3 (the **"Representatives"**); and (ii) a list of three (3) proposed licensed real estate brokers, any of which may serve as one of the Independent Brokers (collectively, the **"Broker Candidates"**). Each Broker Candidate:

Decision Period, the Independent Brokers shall jointly select a real estate broker who (x) meets all of the qualifications of a Broker Candidate, but was not included in the original list of six (6) Broker Candidates; and (y) is not affiliated with any or all of (A) either or both of the Independent Brokers and (B) the real estate brokerage companies with which either or both of the Independent Brokers is affiliated (the "**Determining Broker**"). **The Independent Brokers shall engage the Determining** Broker on behalf of Landlord and Tenant (but without expense to the Independent Brokers), and shall deliver the FMR Submissions to the Determining Broker within five (5) days after the date on which the Independent Brokers select the Determining Broker pursuant to the preceding sentence (the "**Submission Period**").

16.12.3.6 The Determining Broker shall make a determination of the Fair Market Rent within fifteen (15) days after the date on which the Submission Period expires. The Determining Broker shall be required to select one of the parties' specific proposed rates of Fair Market Rent, without being permitted to effectuate any compromise position; provided, however, that in the event that the rates of Fair Market Rent proposed by each of Landlord and Tenant in their respective FMR Submissions differ by no more than five percent (5.0%), then the Determining Broker shall have right, but not the obligation, to average the two (2) proposed rates of Fair Market Rent in order to conclusively determine Fair Market Rent.

16.12.3.7 The decision of the Independent Brokers or the Determining Broker, as the case may be, shall be conclusive and binding on Landlord and Tenant, and neither party shall have any right to contest or appeal such decision. Judgment may be entered, in a court of competent jurisdiction, upon the decision of the Independent Brokers or the Determining Broker, as the case may be.

16.12.3.8 In the event that the initial Term or the first Renewal Term, as the case may be, expires and the then-applicable Renewal Term commences prior to the date on which the Independent Brokers or the Determining Broker, as the case may be, renders their/its decision as to the Fair Market Rent, then from the commencement date of that Renewal Term through the date on which the Fair Market Rent is determined under this Section 16.12 (the "**Determination Date**"), Tenant shall pay monthly Base Rent to Landlord at the same rate of monthly Base Rent in effect immediately preceding the commencement date of the then-applicable Renewal Term; provided, however, that in the event that the Determination Date does not occur within fifteen (15) days after the date on which the then-applicable Renewal Term commences, then commencing with the sixteenth (16^{th}) day of that Renewal Term, Tenant shall pay monthly Base Rent to Landlord at a rate that is 105% of the rate of monthly Base Rent in effect as of the date immediately preceding the date on which then then-applicable Renewal Term commences (the "**Temporary Base Rent**"); **and within ten (10) business days after the** Determination Date, Landlord shall pay to Tenant, or Tenant shall pay to Landlord, whatever sum that Landlord or Tenant, as the case may be, owes the other (the "**Catch-Up Payment**"), based on the Base Rent (including, but not limited to, Temporary Base Rent), actually paid and the Fair Market Rent due (as determined, by the Independent Brokers or the Determining Broker, as the case may be) during that portion of the Renewal Term that elapses before the Catch-Up Payment is paid, in full (together with interest thereon, as provided below). The Catch-Up

(c) The Renewal Option is personal to Tenant. In the event that Tenant assigns its interest under this Lease or subleases all or any portion of the Premises, whether or not in accordance with the requirements of Article 11, and whether directly or indirectly, the provisions of this Section 16.12.3 shall not be available to, or run to the benefit of, and may not be exercised by, any assignee or sublessee.

(d) Unless Tenant delivers a Commitment Notice pursuant to Section 14 below, then the Tenant's Renewal Option shall only apply to the Reduced Premises.

13. Construction of Tenant Improvements. Landlord shall provide an allowance for Tenant Improvements as set forth in this Section 13 as follows:

(a) Landlord shall provide an allowance in a maximum amount of eight dollars ($8.00) per rentable square foot of the Reduced Premises (defined below), unless, prior to the TI Allowance Commencement Date (defined below), Tenant delivers a Commitment Notice to continue to lease the entirety of the currently existing Leased Premises throughout the Extended Lease Term, in which event such allowance shall be based upon the rentable square footage of the entire Leased Premises (the **"Allowance"**) to be used only for the following purposes: (i) for refurbishment of the Reduced Premises or the Leased Premises, as the case may be, (ii) to reconfigure furniture at the Reduced Premises or the Leased Premises, as the case may be, and (iii) to demise the Reduced Premises from the Relinquished Space or the Additional Space, as the case may be (if applicable);

(b) Tenant acknowledges that Landlord has agreed to perform the Tenant Improvements as set forth in the Work Letter attached hereto as Exhibit C (the **"Work Letter"**). Except as otherwise specifically provided in either or both of this Lease and the Work Letter, Landlord shall not be obligated to make any repairs, replacement or improvements of any kind or nature to the foregoing in connection with, or in consideration of, this Lease, nor shall Landlord be required to expend any monies pursuant to the Work Letter in excess of the Allowance.

(c) Landlord shall have no obligation to construct any of the Tenant Improvements unless and until the first to occur of (a) February 1, 2007, being the commencement date of the Extended Lease Term or (b) the date on which Landlord and a third party tenant enter into an AS Lease, as defined below, and (c) the date on which Plan A is implemented (whichever of (a), (b) or (c) is applicable, the **"TI Allowance Commencement Date"**).

(d) All rights of Tenant and obligations of Landlord contained in this Section 13 and the Work Letter shall apply solely if, as of the TI Allowance Commencement Date, this Lease shall be in full force and effect and no act or omission shall occur which, with the giving of notice or the passage of time, or both, shall constitute a breach or default by Tenant under this Lease.

(e) Within thirty (30) days following substantial completion of, and payment in full for, the Tenant Improvements **("Substantial Completion and Payment"),** and to the extent that unexpended funds remain available in the Allowance,

Notwithstanding the foregoing, however, Tenant shall have the unilateral right at any time prior to the first to occur of (i) the implementation of Plan A, (ii) the execution and delivery of the AS Lease by Landlord and the third party tenant; and (ii) February 1, 2007, to deliver written notice to Landlord, advising Landlord that Tenant unconditionally elects to continue to lease the entire Leased Premises, inclusive of the Relinquished Space and the Additional Space, throughout the Lease term, including the Extended Lease Term (the **"Commitment Notice"**). From and after Tenant's delivery of the Commitment Notice, Landlord shall have no further right to implement Plan A nor any obligation to market the Additional Space for lease to a third party, and Tenant shall be obligated to reimburse Landlord for all (if any) reasonable, documented out-of-pocket costs and expenses that either or both of Landlord and its leasing broker incurred in connection with the marketing and potential leasing of the Additional Space (the **"Leasing Costs"**); provided, however, that the maximum aggregate amount of Leasing Costs that Tenant shall be obligated to pay to Landlord is $1,500.00. Tenant shall pay the Leasing Costs to Tenant within ten (10) days after Landlord's written demand therefor (delivered with reasonable evidence of the Leasing Costs). Landlord shall not enter into either (1) any lease amendment with the Adjacent Tenant to implement Plan A; or (2) the AS Lease without first providing Tenant with at least ten (10) days' notice of Landlord's intent to enter into either of (1) or (2), as the case may be, and Tenant shall have the right to deliver a Commitment Notice to Landlord within such ten (10) day period, whereupon Landlord shall not implement Plan A or enter into the AS Lease, as the case may be, but instead, Tenant shall be unconditionally obligated to continue leasing the entire Leased Premises (inclusive of the Relinquished Space and the Additional Space) throughout the Lease term, including the Extended Lease Term, and Tenant shall also be required to reimburse Landlord for the Leasing Costs, as provided above.

15. Broker. Section 16.06 of the Original Lease is hereby deleted and, in lieu thereof, the following is instead substituted:

Tenant covenants, warrants and represents that TODD BRAUFMAN of Equis Corporation was the only broker to represent Tenant in the negotiation of this Lease (**"Tenant's Broker"**). Landlord shall be solely responsible for paying the commission of Tenant's Broker pursuant to a separate agreement. Each party agrees to and hereby does defend, indemnify and hold the other harmless against and from any brokerage commissions or finder's fees or claims therefor by a party claiming to have dealt with the indemnifying party and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination or expiration of this Lease.

16. Waiver of Trial by Jury. THE LANDLORD AND THE TENANT, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY TO THIS LEASE WITH RESPECT TO THIS LEASE, THE LEASED PREMISES, OR ANY OTHER MATTER RELATED TO THIS LEASE OR THE LEASED PREMISES.

17. Miscellaneous.

17.1 Entire Agreement. This Amendment constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous oral agreements, understandings, representations and statements, and

IN WITNESS WHEREOF, the parties executed this Amendment as of the day of January, 2006.

LANDLORD:

FirstCal Industrial 2 Acquisition, LLC,
a Delaware limited liability company

By: FirstCal 2 Industrial Leasing Manager, LLC, a Delaware limited liability company and its leasing manager

By: First Industrial, L.P., a Delaware limited partnership, its sole member

By: First Industrial Realty Trust, Inc., a Maryland corporation and its sole general partner

By: /s/ Chris William
Name: Chris William
Title: SR Regional Director

TENANT:

ESCHELON TELECOM, INC., a Delaware corporation

By: /s/ Michael A. Donahue
Name: Michael A. Donahue
Title: VP Finance and Treasurer

EXHIBIT B

PLAN B

B-1

EXHIBIT D

WORK LETTER

This Work Letter (this **"Work Letter"**) is incorporated into and made a part of the Lease. All terms not defined herein shall have the meanings set forth in the Lease. In the event of any conflict between the terms and provisions of the Lease and those of this Work Letter, the terms and provisions of this Work Letter shall control, in all events.

1. **Performance of Work.** Landlord shall cause to be performed, in accordance with the terms of this Work Letter, (a) if Plan A is applicable, those certain Tenant Improvements depicted in the plans, specifications and working drawings described in Schedule 1 attached hereto and made a part hereof (the **"Plan A Final Plans"**); or (b) if Plan B is applicable, those certain Tenant Improvements depicted in the plans, specifications and working drawings described in Schedule 2 attached hereto and made a part hereof (the **"Plan B Final Plans;"** references to the Final Plans shall mean the Plan A Final Plans or the Plan B Final Plans, as applicable). All Tenant Improvements shall be performed in a good and workmanlike manner, using new first grade quality materials. Landlord shall be responsible to obtain all necessary governmental and municipal approvals and permits required as a condition precedent to the performance and installation of the Tenant Improvements, and all costs and expenses incurred by Landlord pursuant to this sentence shall be deemed to constitute Work Cost, as defined below. The Final Plans have been prepared by LHB Architects (**"Architect"**). All work required for the construction and installation of the Tenant Improvements (**"Work"**) shall be performed only by Landlord's contractor (the **"Contractor"**). Landlord shall select the Contractor. Landlord shall obtain bids from three (3) contractors who are able to perform the Work. Tenant shall, in its sole, but reasonable, discretion and with the assistance and approval of Landlord, select the Contractor based on the bid price, quality of service, delivery date and prior working relationship with Tenant. Landlord shall use its good faith efforts to cause the Landlord Improvements to be substantially completed within ninety (90) days after the date on which the Work commences (the **"Scheduled Commencement Date"**). The costs to construct the Tenant Improvements, including, but not limited to, the cost to prepare the Final Plans (collectively, the **"Work Cost"**), shall be paid for by Landlord (except as otherwise specifically set forth below): provided, however, that in no event shall Landlord be obligated to pay a Work Cost in excess of the Allowance, and, to the extent the Work Cost exceeds the Allowance, Tenant shall be solely responsible for (and, if necessary, promptly reimburse Landlord for) any such excess amount (**"Excess Work Cost"**). For purposes of the Lease, any Excess Work Cost shall constitute Additional Rent.

2. **Change Orders.** From time to time after the date of the Amendment, Tenant may notify Landlord of changes that Tenant proposes be made to the Final Plans (a **"Change Order"**). Promptly upon Tenant's delivery to Landlord of a Change Order, Landlord shall notify Tenant (**"Change Order Notice"**) of both: (i) any estimated increase in the Work Cost due to the Change Order, and (ii) any estimated delay (an **"Estimated Delay"**) in the Scheduled Commencement Date if the Change Order is implemented. Tenant shall notify Landlord of its final approval or disapproval of the Change Order within two (2) business days after Landlord delivers to Tenant the applicable Change Order Notice (**"Change Order Response Period"**). If Tenant fails to timely notify Landlord of its approval or disapproval of any proposed Change

Substantial Completion Date. At Landlord's request from time to time, Tenant will furnish Landlord with written statements acknowledging the completion of the Punch List Items. Any disputes as to the nature or existence of any Punch List Item or as to the substantial completion of the Landlord Improvements shall be resolved by reasonable and joint decision of the Architect and a duly licensed Minnesota architect selected by Tenant.

6. **Delay.**

6.1. Delay Events: The Scheduled Commencement Date may be delayed from time to time due to any or all of the following events (collectively, **"Delay Events"**):

6.1.1. Change Orders requested or approved by Tenant;

6.1.2. Tenant's disapproval of a Substitution;

6.1.3. Any act of Tenant or its agents, employees or contractors that interferes with the Work;

6.1.4. Any delay due to, or in connection with, materials specified by Tenant to be procured from a particular source, including, without limitation, any delivery delays or delays relating to the quality or other characteristics of such materials;

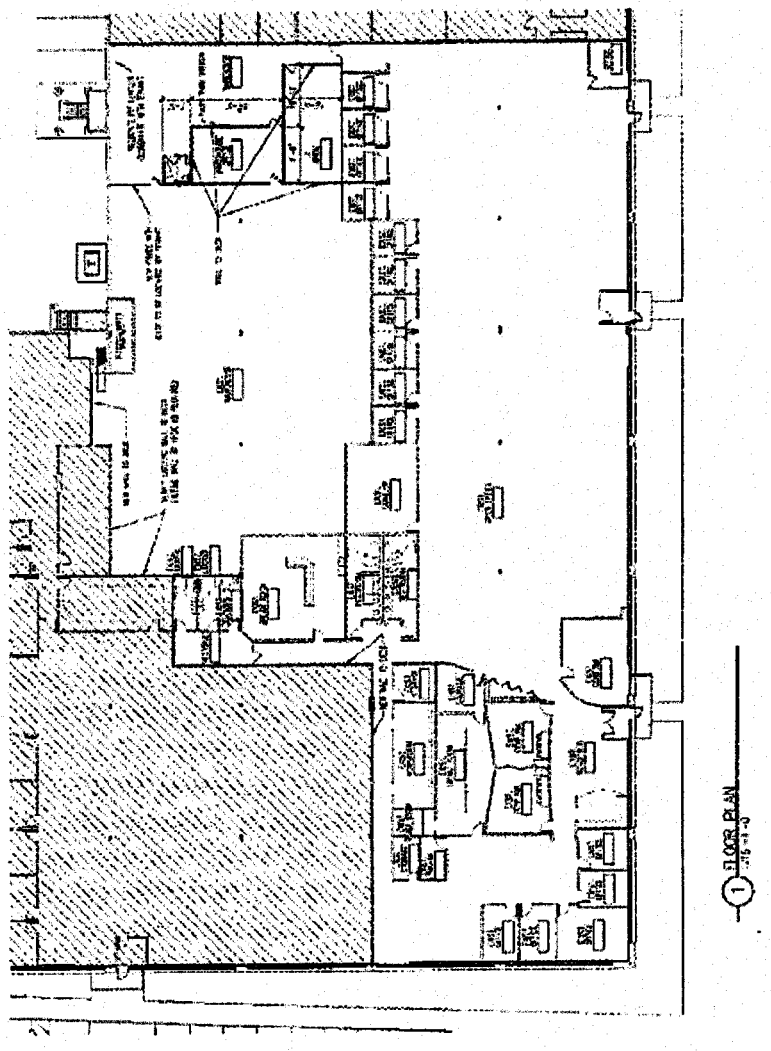
6.1.5. Any delay of any applicable governmental authority to issue appropriate permits for construction of the Landlord Improvements and a certificate of occupancy (or comparable certification) for the Premises upon substantial completion of the Work Items; and

6.1.6. A matter arising or occurring under Section 17.4 of the Lease.

7. **Limit on Landlord's Liability.** Without limitation of Landlord's limitation of liability set forth in the Lease, Landlord shall not be liable for any damage caused to Tenant due to a delay as a result of a Delay Event in the delivery of the Tenant Improvements to Tenant.

EXHIBIT A

Option A - Preliminary



Initials:

Landlord: [ILLEGIBLE]
Tenant: [ILLEGIBLE]

EXHIBIT 10.16.1

AMENDMENT TO LEASE

This Amendment to Lease ("Amendment") is made effective as of the 28th day of APRIL, 2005, by and between PARKSIDE SALT LAKE CORPORATION, a Delaware corporation ("Landlord") and ESCHELON TELECOM, INC., a Delaware corporation ("Tenant") with reference to the following facts and circumstances.

A. Landlord is the Owner of that certain building located at 215 South State Street, Salt Lake City, Utah 84111 (the "Property").

B. Landlord's predecessor-in-interest and Tenant's predecessor-in-interest entered into a certain Office Lease, dated December 28, 1999, as amended by that certain Landlord's Waiver and Consent dated August 25, 2000 (collectively, the "Lease") for certain premises described as Suite 380 (the "Premises") located in the Property.

C. American Realty Advisors ("Advisor") is the real estate investment manager to the Landlord.

D. Landlord and Tenant desire to amend the Lease upon terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the mutual covenants and promises contained herein and after good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties do hereby agree to the following:

1. Definitions. Each capitalized term used in this Amendment shall have the same meaning as is ascribed to such capitalized term in the Lease, unless otherwise provided for herein.

2. Expansion Premises. Commencing on July 15, 2005 (the "Expansion Date"), the Premises shall be expanded to include an additional 11,925 rentable square feet in Suites 280 and 110, as shown on Exhibit A, attached (the "Expansion Premises"). Following the Expansion Date, the Premises shall consist of 18,669 rentable square feet.

3. Term. The term of the Lease is hereby extended for the period commencing on the Expansion Date and ending on July 14, 2012 (the "Extension Period"). Tenant acknowledges and agrees that, unless expressly provided for in this Amendment, Tenant has no right to renew or extend the term after the Extension Period.

4. Rental. The Basic Annual Rent for the Extension Period shall be as follows:

5. Conditional Rent. Provided that Tenant has faithfully performed all of the terms and conditions of the Lease and this Amendment, Landlord agrees to abate Tenant's obligation to pay Basic Annual Rent on Suites 105 and 280 for July 15, 2005 through March 14, 2006 (the "Conditional Rent"). Notwithstanding the foregoing, however, during such abatement period. Tenant shall still be responsible for the payment of all Additional Rent payable under this Lease. In the event of a default at any time during the Term, in addition to any other remedies to which Landlord may be entitled, Landlord shall be entitled to recover the Conditional Rent (i.e., the amount of the Conditional Rent shall not be deemed to have been abated, but shall become immediately due and payable as unpaid Rent earned, but due at the time of such default).

6. Additional Rent. Throughout the Extension Period, Tenant's Share for the calculation of Operating Expenses, payable as Additional Rent subject to the provisions of this Section 6, shall be 9.82%. Additionally, the Base Year throughout the Extension Period shall be the 2005 calendar year and for the purpose of calculating Tenant's Additional Rent, Controllable Operating Costs shall not increase by more than four percent (4%) per year in the aggregate over the Term. "Controllable Operating Costs" shall mean Operating Expenses other than insurance, utilities and security.

7. Parking. Notwithstanding anything in the Lease to the contrary, during the Extension Period Tenant shall have the right to use four (4) covered reserved parking spaces at a rate of $85.00 per space per month in locations designated by Landlord, twenty (20) covered unreserved parking spaces at a rate of $65.00 per space per month in locations designated by Landlord, fifteen (15) unreserved spaces on the surface lot adjacent to the Building at a rate of $18.00 per space per month, and one (1) reserved space in the Building contractor lot at no charge to Tenant. Notwithstanding the foregoing, Tenant's obligation to pay rent for the parking spaces shall be abated for July 15, 2005 through July 14, 2006.

8. Automatic Expansion. Provided no default has occurred, Tenant shall, once such space becomes available, expand into approximately 1,000 additional contiguous rentable square feet on the first (1st) floor of the Building, in a location selected by Landlord from the expansion areas shown on Exhibit A attached hereto (the "Expansion Space"). Tenant shall take the Expansion Space subject to all of the same terms and conditions of the Lease, including, but not limited to, the then current rental rate. Additionally, Landlord hereby agrees to make improvements in the Expansion Space so that the Expansion Space shall be in the same condition as the Premises upon the date Tenant expands into the Expansion Space. Tenant shall expand into the Expansion Space upon substantial completion of Landlord's improvement work in the Expansion Space and both parties shall execute an amendment to the Lease setting forth the terms of the expansion.

Any termination of the Lease shall terminate all rights of Tenant with respect to the Expansion Space. The rights of Tenant with respect to the Expansion Space shall not be severable from the Lease, nor may such rights be assigned or otherwise conveyed in connection with any permitted assignment of the Lease. Landlord's consent to any assignment of the Lease shall not be construed as allowing an assignment or a conveyance of such rights to any assignee.

The Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from any delay in delivering possession of the Expansion Space to Tenant, but abatement of the Basic Annual Rental attributable to the Expansion Space from the

allowance of $5.00 per rentable square foot. In the event that Tenant shall exercise an option to renew the Lease, then the Market Rent shall be agreed upon in a meeting of the parties hereto held at least ninety (90) days prior to the expiration of the Extension Period. If the parties are able to agree on an amount of rent that is mutually satisfactory, then such agreements shall be placed in writing and shall be signed by the parties hereto and shall thereupon become a part of the Lease.

c. If the parties hereto are unable to agree upon the rent at least thirty (30) days prior to the commencement of the renewal term, then the disagreement shall be promptly submitted to arbitration as provided below.

d. Failure of Tenant properly to exercise any option herein granted shall be construed as a waiver of all options herein granted, and the Lease shall then terminate at the expiration of the Extension Period.

e. If the parties do not agree upon the Market Rent within the stipulated time, no later than five (5) business days following the expiration of the stipulated time, each party shall select an arbitrator having not less than ten (10) years' actual experience in the commercial real estate brokerage business, and the arbitrators so selected shall immediately meet for the purpose of hearing and deciding the dispute and fixing the relevant rate of rent. If the two arbitrators selected cannot agree on the rental rate within ten (10) business days after appointment (the "Initial Review Period"), but the rental rates differ by less than five percent (5%), the rental rate shall be the average of the two rates. If the rental rates differ by more than five percent (5%), no later than five (5) business days following the expiration of the Initial Review Period, the two arbitrators shall select a third arbitrator with qualifications similar to their own. Within ten (10) business days following appointment, the third arbitrator shall select one of the two rental rates promulgated by the first two arbitrators as the rental rate for the renewal period. If the arbitrators cannot agree on the third arbitrator, they shall petition the presiding judge of the local state court having jurisdiction to appoint such arbitrator to act as an umpire between the arbitrators selected by Landlord and Tenant. The decision of the third arbitrator or presiding judge, as the case may be, shall be binding on both parties. Landlord and Tenant shall each be responsible to pay their respective arbitrators and will share equally the cost of the third arbitrator.

f. Except as expressly set forth herein, Tenant shall have no option to renew the Lease.

11. Signage. Landlord shall pay all costs of fabrication and installation of Building standard letters with Tenant name and suite number at the main entrance to the Premises and one (1) line on the Building directory to display Tenant's name and location in the Building. Any changes to the signage initially provided by Landlord shall be at Tenant's expense. Additionally, Tenant may install, at Tenant's sole cost and expense, Building signage similar to the Building signage presently installed by Fidelity Investments, provided Tenant has obtained Landlord's prior written consent to such signage.

Glendale, CA 91203
Attention: Stanley lezman
Telecopy: 818-545-8460

If to Tenant: Eschelon Telecom, Inc.
730 Second Avenue South, Suite 900
Minneapolis, MN 55402
Telecopy: 612.436.6702

b. Time of Essence. Time is of the essence of this Amendment and each and every turn and provision hereof.

c. Modification. A modification of any provision herein contained, or any other amendment to this Amendment, shall be effective only if the modification or amendment is in writing and signed by both Landlord and Tenant.

d. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

e. Number and Gender. As used in this Amendment, the neuter includes masculine and feminine, and the singular includes the plural.

f. Governing Law. This Amendment shall be governed by, interpreted under and construed and enforced in accordance with the laws of Utah applicable to agreements made and to be performed wholly within Utah.

g. Construction. Headings at the beginning of each Section and subsection are solely for the convenience of the parties and are not a part of this Amendment. Except as otherwise provided in this Amendment, all exhibits referred to herein are attached hereto and are incorporated herein by this reference. Unless otherwise indicated, all references herein to Articles, Section, subsections, paragraphs, subparagraphs or provisions are to those in this Amendment. Any reference to a paragraph or Section herein includes all subparagraphs or subsections thereof. This Amendment shall not be construed as if it had been prepared by only Landlord or Tenant, but rather as if both Landlord and Tenant had prepared the same. In the event any portion of this Amendment shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Amendment, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Amendment.

h. Integration of Other Agreements. This Amendment, the Lease and prior amendments set forth the entire agreement and understanding of the parties with respect to the matters set forth herein and supersedes all previous written or oral understandings, agreements, contracts, correspondence and documentation with respect thereto. Any oral representation or modifications concerning this Amendment shall be of no force or effect.

IN WITNESS WHEREOF, this Amendment is executed as of the day and year aforesaid.

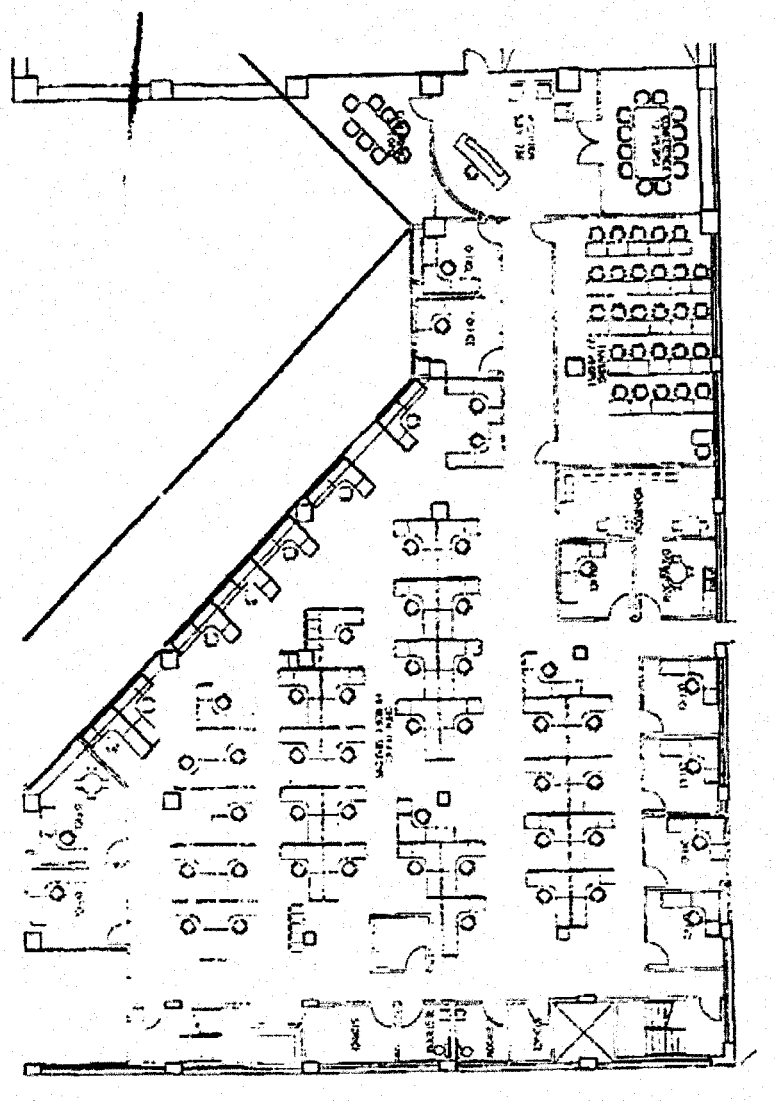
LANDLORD:

PARKSIDE SALT LAKE CORPORATION, a Delaware corporation

By: /s/ David Coor
Printed Name: David Coor
Title: Asst. Manager
Date: 4.28.05

TENANT:
ESCHELON TELECOM, INC., a Delaware corporation

By: /s/ Michael A. Donahue
Printed Name: Michael A. Donahue
Title: VP Finance and Treasurer
Date: 4/28/05



approved the working drawings in question. The approved working drawings are hereinafter referred to as the "Approved Working Drawings."

2. Construction. Following approval of the Approved Working Drawings, Landlord shall construct the Tenant Improvements in substantial accordance with the Approved Working Drawings.

3. Warranties. Landlord shall use reasonable efforts to obtain a warranty from Landlord's contractor against defects in materials and workmanship for one (1) year following substantial completion of the Tenant Improvements. Landlord hereby assigns to Tenant all warranties and guaranties by the contractor, and Tenant hereby waives all claims against Landlord relating to, or arising out of the construction of, the Tenant Improvements.

4. Miscellaneous.

   (a) Provided the same will not interfere with the Landlord work, Landlord shall allow Tenant access to the Expansion Premises thirty (30) days prior to the substantial completion of the Tenant Improvements for the purpose of installing Tenant's equipment or fixtures (including Tenant's data and telephone equipment) in the Expansion Premises. Additionally, Landlord shall provide Tenant an allowance up to $19,224.00, upon receiving copies of paid receipts, to reimburse Tenant for moving expenses.

   (b) Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

   (c) Notwithstanding any provision to the contrary contained in this Lease, if a default by Tenant has occurred at any time prior to substantial completion of the Tenant Improvements, then (i) in addition to all other rights and remedies granted to Landlord pursuant to this Lease, Landlord shall have the right to cause the contractor to cease the construction of the Expansion Premises (in which case, Tenant shall be responsible for any delay in substantial completion caused by such work stoppage); and (ii) all other obligations of Landlord under the terms of this Exhibit shall be forgiven until such time, if any, as such default may be cured.

IN WITNESS WHEREOF, this Second Amendment of Lease has been executed as of the day and year first above written.

"Landlord"

ARI CENTRAL, LP, a Delaware Limited Partnership
DANARI CENTRAL, LLC a Delaware Limited Liability Company

By: Adler Realty Investments. Inc.
Title: Manager

By: Adler Realty Investments, Inc.
Title: Manager

By: _____
Title: Executive Vice President

"Tenant"

Eschelon Telecom, Inc.
A Delaware Corporation

By: /s/ Michael A. Donahue
Title: V P Finance and Treasurer

FIRST AMENDMENT TO LEASE

This First Amendment to Office Lease ("First Amendment") is dated for reference purposes this 17th day of March, 2003, between SOFI IV SIM OFFICE INVESTORS II, L.P., a Delaware limited partnership ("Landlord") and ESCHELON TELECOM, INC., a Delaware corporation, formerly known as Advanced Telecommunications, Inc., a Delaware corporation ("Tenant").

RECITALS

Landlord and Tenant entered into that certain Office Lease, dated December 1, 1999 the "Lease", covering the office space located at the 2600 Tower, located at 2600 North Central Avenue, Phoenix, Arizona, 85004 (the "Project"), identified as Suite 500 consisting of approximately 6,028 square feet, reduced pursuant to this First Amendment to 5,545 square feet (the "Existing Premises").

Pursuant to this First Amendment, Tenant wishes to lease an additional approximately 9,391 rentable square feet located adjacent to the Existing Premises (the "Additional Premises") for a period of five (5) years and eight (8) months. Commencing on the Additional Premises Commencement Date (as defined below), all references to the "Premises" in the Lease and this First Amendment shall be deemed to refer collectively to the Existing Premises and the Additional Premises. The Lease and this First Amendment are collectively referred to as the "Lease". Upon the terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree the Lease is amended as follows:

AGREEMENT

1. Effective Date. The effective date of the Lease amendments set out in this First Amendment is March 17, 2003 (the "Effective Date").

2. Defined Terms. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Lease.

3. Revised Summary of Basic Terms. Article I "Summary of Basic Terms" of the Lease is hereby amended and restated in its entirety with the amended and restated Article I "Summary of Basic Terms" attached as Schedule 1 attached hereto and incorporated herein by reference.

4. Lease of Additional Premises. Upon and subject to the terms and conditions as set forth in this First Amendment and the Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord those certain premises consisting of approximately 9,391 rentable square feet located on the fifth floor adjacent to the Existing Premises, as depicted on Schedule 2 attached hereto and incorporated by this reference and described herein as the Additional Premises. The term of the Lease, as it applies to the Additional Premises, shall commence upon the earlier of (a) the date of Substantial Completion of the Additional Premises Tenant Improvements, which is currently estimated to be June 1, 2003 (the "Delivery Date"); (b) the date Tenant commences business operations in the Additional Premises; or (c) the date Substantial Completion of the Additional Premises Tenant Improvements would have occurred but for Tenant Delay (the foregoing terms are defined in Exhibit A). If Landlord does not tender

Additional Premises:

Landlord shall license vehicle parking spaces to Tenant and Tenant's business on the following terms and conditions:

Landlord shall provide eight (8) vehicular parking spaces as exclusive parking spaces for Tenant and its employees in the parking garage portion of the Office Complex ("Reserved Covered Spaces"). This license is for Reserved Covered Spaces in the general parking area to be designated and redesignated from time to time by Landlord; provided, however, Landlord may require Tenant to park in a specific location. Landlord shall not be liable to Tenant for the failure of any of its tenants, invitees, employees, agents or customers or any third parties to comply with the designation of the Reserved Covered Spaces.

Landlord shall provide thirty-two (32) vehicular parking spaces on a covered unreserved basis for Tenant and its employees in the unreserved portion of the parking garage portion of the Office Complex (the "Unreserved Covered Spaces"). This license is for Unreserved Covered Spaces in the general parking area to be designated and redesignated from time to time by Landlord; provided, however, Landlord may require Tenant to park in a specific location. Landlord shall not be liable to Tenant for the failure of any of its tenants, invitees, employees, agents or customers or any third parties to comply with the designation of the Unreserved Covered Spaces.

Landlord shall provide ten (10) vehicular parking spaces on an unreserved basis for Tenant and its employees in the surface parking facility serving the Office Complex ("Surface Spaces"). This license is for Surface Spaces in the unreserved portion of the surface parking lot to be designated and redesignated from time to time by Landlord; provided, however, Landlord may require Tenant to park in a specific location. Landlord shall not be liable to Tenant for the failure of any of its tenants, invitees, employees, agents or customers or any third parties to comply with the designation of the Surface Spaces.

The parking fees for the Reserved Covered Spaces, the Unreserved Covered Spaces and the Surface Spaces, as they relate to the Additional Premises, shall be abated for the first forty-one (41) months of the Additional Premises Term hereof; provided, however, that all other charges related to parking (such as charges for parking garage access devices and name plates for reserved spaces) shall be paid for by Tenant upon receipt of invoice from Landlord. Thereafter, Tenant agrees to pay as a monthly fee for such license of parking spaces payable on or before the first day of each month in advance as follows: during the last twenty-four (24)

written notice to Tenant. If the garage is damaged by fire or other casualty, Landlord will cause it to be repaired with due diligence.

Subject to the abatement provided for in the preceding paragraph, Landlord shall have the right to close any portion of the garage and deny access thereto in connection with any repairs or in an emergency, as it may require, without liability, cost or abatement of fee.

Tenant shall perform, observe and comply with such rules of the Office Complex as may be reasonably adopted by Landlord in respect to the use and operation of said garage.

Tenant shall, when using the parking facilities of said garage, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between designated lines. Landlord reserves the right to tow away, or otherwise impound, at the expense of the owner or operator, any vehicle which is improperly parked or parked in a no parking zone.

In the event a key or other access device is supplied by Landlord to Tenant in connection with the rights granted herein, Tenant will surrender such key or access device to Landlord upon termination of this Lease.

7. Right to Terminate. Provided that the Lease is then in full force and effect and Tenant is not in default, on the date of exercise of this Option, after notice and the expiration of any applicable grace period, Tenant may terminate the Lease, as it applies to the Additional Premises, as of the last day of the 44th month following the Additional Premises Commencement Date (the "Early Termination Date") subject to and in accordance with this Section 7. To exercise such termination right, Tenant must (a) deliver written notice to Landlord that Tenant desires to terminate the Lease, as it applies to the Additional Premises, as of the Early Termination Date at least ninety (90) days prior to the Early Termination Date; and (b) immediately pay Landlord a payment, as each relates to the Additional Premises, equal to Landlord's then unamortized costs of the Additional Premises Tenant Improvements, moving allowance, leasing commissions and two (2) months Additional Premises Base Rent at the rate then in effect. If Tenant terminates the Lease, as it applies to the Additional Premises, Landlord, at its sole cost and expense, shall restore that portion of the demising wall that separated the Existing Premises from the Additional Premises to its condition existing prior to the construction of the Additional Premises and Tenant agrees to allow Landlord to temporarily occupy the Existing Premises in order to accomplish such construction.

8. Tenant's Option to Renew the Additional Premises Term.

(A) Provided that the Lease is then in full force and effect and Tenant is not in default, on the date of exercise of this Option, after notice and the expiration of any applicable grace period, Tenant shall have the option to extend the Additional Premises Term of the Lease for one

Tenant uses HVAC in excess of that supplied by Landlord pursuant to this Article 27(A), Tenant shall pay to Landlord, upon billing, the actual cost of such of such excess consumption, provided, however, that after-hours HVAC usage shall be billed to Tenant based upon rates as reasonably established by Landlord from time to time, which rates are currently estimated to be $8.50 per hour per Zone (as hereinafter defined). A zone covers approximately 1200 square feet (a "Zone") and each floor contains 13 Zones. Tenant shall be entitled to a credit equal to twenty (20) hours excess HVAC usage each month for the Additional Premises during the Additional Premises Term. Any unused credits for any Zone in any month may not be carried forward or applied to any other Zone or any other month.

12. Moving Expenses. The following is added as a new Article 36:

ARTICLE 36. MOVING EXPENSES

In connection with Tenant's relocation of the Tenant's personal property to the Additional Premises, Landlord will pay to Tenant an amount equal to $1.50 per rentable square foot of the Additional Premises. Such moving allowance will be paid by Landlord to Tenant in cash within 30 days of the Additional Premises Commencement Date.

13. Storage. If requested by Tenant and to the extent available, Landlord to provide storage space in the parking facilities portion of the Building, for Tenant's exclusive use as storage for personal property used in connection with Tenant's occupancy of the Premises. The location of the storage space will be determined by Landlord in its sole discretion. Tenant will pay Landlord annually $12.00 per square foot of storage space for the storage space, payable monthly in advance, in equal installments at the same time and manner as Existing Premises Base Rent or Additional Premises Base Rent, as applicable.

14. Brokerage. Article 24 of the Lease is hereby amended with the addition of the following:

"Landlord will pay any brokers named in Section 1.16 in accordance with the applicable listing agreement for the Building."

15. Operating Costs. With respect to the Additional Premises, for each calendar year, Tenant's obligation to pay Operating Costs shall not increase, on an annual and cumulative basis, by an amount greater than five percent (5.0%) per year following the initial lease year.

16. Existing Premises Rentable Square Footage. The rentable square footage of the Existing Premises is hereby reduced from 6,028 to 5,545.

SCHEDULE 1

ARTICLE 1 SUMMARY OF BASIC TERMS

1.1 The Existing Premises: Suite #500 in the building consisting of approximately 5,545 square feet of rentable area as illustrated on the attached Exhibit A; The Additional Premises: Suite #550 in the Building consisting of approximately 9,391 rentable square feet of rentable area as illustrated on the attached Exhibit A. A floor plan for the floor(s) on which the Premises is located is attached as Exhibit A-l.

1.2 The Building: The building is located at 2600 North Central Avenue, Phoenix, Arizona.

1.3 "Project" means the Building identified in Section 1.2, and all lands and facilities used in connection with the Building as reasonably determined from time to time by Landlord. The Project consists of approximately 322,000 square feet of rentable area.

1.4 Names of Guarantors: None.

1.5 Existing Premises Security Deposit: $12,000.00; Additional Premises Security Deposit: $0 (see provisions of Article 4)

1.6 The Existing Premises Term: Ten (10) years and four (4) months, beginning on the Commencement Date and ending on the Expiration Date; The Additional Premises Term: Five (5) years and eight (8) months, beginning on the Additional Premises Commencement Date and ending on the Additional Premises Expiration Date.

1.7 Existing Premises Commencement and Expiration Dates: January 15, 2000, and May 15, 2010, respectively, subject to the provisions of Exhibit A; Additional Premises Commencement and Expiration Dates: June 1, 2003 and February 1, 2009.

1.8 Existing Premises Base Rent:

Lease Year	Annual Base Rent	Base Rent Per Square Foot	Monthly Base Rent
1	$ 120,560.00	$ 20.00/sq. ft.	$ 10,046.67
2	$ 124,176.80	$ 20.60/sq. ft.	$ 10,348.07
3	$ 127,914.16	$ 21.22/sq. ft.	$ 10,659.51
Month 36 – Additional Premises Commencement Date	$ 131,772.08	$ 21.86/sq. ft.	$ 10,981.01
Additional Premises	$ 121,213.70	$ 21.86/sq. ft.	$ 10,101.14

1.13 Additional Premises Tenant Improvement Allowance: Landlord to deliver the Additional Premises to Tenant "turnkey" per space plan prepared by Mittelstaedt Cooper & Associates dated January 8, 2003, using building standard materials ("Original Plan"). Notwithstanding anything to the contrary contained herein, Landlord's obligation relating to the Additional Premises Tenant Improvements shall be limited to costs per Original Plan.

1.14 Landlord shall commence construction of the fifth floor common area remodel ("Common Area Improvements") within thirty (30) days after completion of the Additional Premises Tenant Improvements and shall, at Landlord's sole expense, complete the Common Area Improvements in a timely manner, subject to Force Majeure and Tenant Delay.

1.15 Additional Premises Load Factor: 6%.

1.16 Tenant's Address for Pre-occupancy Notices:

730 2nd Avenue South, #1200
Minneapolis, MN 55402

1.17 Landlord's Notice Address:

Starwood Asset Management
2525 East Camelback Road
Suite 740
Phoenix, AZ 85016
Attn.: Mark M. Grumley
Phone: (602) 468-0112
Facsimile: (602) 468-1567

Copy to:

Rinaldi, Finkelstein & Franklin, LLC
591 West Putnam Avenue
Greenwich, CT 06830
Attn.: Eric W. Franklin, Esq.
Phone: (203) 422-7768
Facsimile: (203) 422-7868

Copy to:

CB Richard Ellis
2415 East Camelback Road
Ground Floor
Phoenix, AZ 85016
Attn.: Asset Service
Phone: (602) 735-5445

SCHEDULE "2"

Floor Plan

the Additional Premises Construction Drawings and Specifications) on or before , 2003, then such delay is a Tenant Delay until Tenant's approval is received. After Tenant's approval, Landlord will submit the Additional Premises Construction Drawings and Specifications for permits and construction bids. Tenant will not withhold any approval except for reasonable cause and will not act in an arbitrary or capricious manner in connection with the review, revision, approval or disapproval of the Additional Premises Construction Drawings and Specifications. Tenant will not specify long lead time items that would delay Substantial Completion of the Additional Premises Tenant Improvements.

5. Change Orders. Tenant will immediately notify Landlord if Tenant desires to make any changes to the Additional Premises Tenant Improvements after Tenant has approved the Additional Premises Construction Drawings and Specifications. If Landlord approves the revisions, Landlord will notify Tenant of the anticipated additional cost and delay in completing the Additional Premises Tenant Improvements that would be caused by such revisions. Tenant will approve or disapprove the increased cost and delay within five (5) business days after such notice. If Tenant approves, Landlord will prepare, and Landlord and Tenant will execute, a Change Order describing the revisions and the anticipated additional cost and delay. Any delay relating to a request for revisions or a Change Order is a Tenant Delay. If the Change Order causes the cost of the Additional Premises Tenant Improvements to exceed the Additional Premises Improvement Allowance (or if the cost of the Additional Premises Tenant Improvements already exceeds the Additional Premises Improvement Allowance), Tenant shall prepay the added costs of the Change Order.

6. Substantial Completion; Punch List. As used in this Lease, "Substantial Completion" means the earlier to occur of the following: (a) the issuance of all final unconditional approvals and green tags by the governmental authority exercising jurisdiction over the Additional Premises Tenant Improvements signifying the final and unconditional acceptance and approval of the Additional Premises Tenant Improvements, (b) the date a Certificate of Occupancy is issued for the Additional Premises, and (c) if a Certificate of Occupancy is not required, the date Tenant is reasonably able to take occupancy of the Additional Premises; provided that if either (a), (b) or (c) is delayed or prevented because of work Tenant is responsible for performing in the Additional Premises, "Substantial Completion" means the date that all of Landlord's work which is necessary for either (a), (b) or (c) to occur has been performed and Landlord has made the Additional Premises available to Tenant for the performance of Tenant's work. Within thirty (30) days after Substantial Completion, Landlord and Tenant will inspect the Additional Premises and develop a Punch List. Landlord will cause the items listed on the Punch List to be completed with commercially reasonable diligence and speed, subject to Tenant Delay and Force Majeure. If Tenant refuses to inspect the Additional Premises with Landlord within the 30-day period, Tenant is deemed to have accepted the Additional Premises as delivered. Tenant will not occupy the Additional Premises before Substantial Completion without Landlord's prior written consent, which consent Landlord may grant, withhold or condition in its sole and absolute discretion. If Landlord consents, during the early occupancy period Tenant may only install Tenant's furniture, fixtures and equipment in the Additional Premises and must comply with and observe all terms and conditions of this Lease (other than Tenant's obligation to pay Additional Premises Base Rent).

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-128319) and in the Registration Statement on Form S-3 (No. 333-131462) of our report dated February 17, 2006, with respect to the consolidated financial statements and schedule of Eschelon Telecom, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2005.

/s/ Ernst & Young LLP

Minneapolis, Minnesota
March 13, 2006

Exhibit 31.2

Certification of Chief Financial Officer

I, Geoffrey M. Boyd, certify that:

1. I have reviewed this quarterly report on Form 10-K of Eschelon Telecom, Inc.,

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of period covered by this report based on such evaluation; and

c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal controls over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:

a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

March 17, 2006

Sign: /S/ Geoffrey M. Boyd
Geoffrey M. Boyd
Chief Financial Officer

Exhibit 32.2

Certification of Chief Financial Officer
Pursuant to 18 U.S.C. § 1350, as adopted pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Eschelon Telecom, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

(i) the accompanying Annual Report on Form 10-K of the Company for the year ended December 31, 2005 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Sign: /S/ Geoffrey M. Boyd
Geoffrey M. Boyd
Chief Financial Officer
March 17, 2006

AGREEMENT AND PLAN OF MERGER

among

ESCHELON OPERATING COMPANY, INC.,

MOUNTAIN ACQUISITION CORP.,

and

MOUNTAIN TELECOMMUNICATIONS, INC.

Dated as of June 29, 2006

TABLE OF CONTENTS

Exhibits

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made and entered into as of June 29, 2006 (as amended, supplemented, or otherwise modified from time to time, this "Agreement"), by and among Eschelon Operating Company, Inc., a Minnesota corporation (the "Parent"), Mountain Telecommunications, Inc., a Delaware corporation (the "Company"), Mountain Acquisition Corp., a Delaware corporation and a direct wholly owned subsidiary of the Parent (the "Merger Sub") and Jack O. Pleiter (the "Stockholders' Agent"). The Parent, the Company, the Merger Sub and the Stockholders' Agent may sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The respective Boards of Directors of the Parent, the Merger Sub and the Company have each approved the merger of the Merger Sub with and into the Company (the "Merger"), with the Company to be the surviving corporation of the Merger, all upon the terms and subject to the conditions set forth in this Agreement.

B. The Board of Directors of the Company has determined that this Agreement is advisable to the Company's stockholders and has recommended that the Company's stockholders adopt this Agreement.

C. In connection with the Merger, each share of the Company's issued and outstanding Class A Common Stock, $0.001 par value per share (the "Company Class A Common Stock") and each share of the Company's Common Stock, $0.001 par value per share (the "Company Common Stock" and, collectively with the Company Class A Common Stock, the "Company Capital Stock") shall be exchanged for the right to receive a portion of the Merger Consideration upon the terms and subject to the conditions of this Agreement.

D. The Parent, the Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Certain Defined Terms. Unless the context otherwise requires, the following terms, when used in this Agreement, shall have the respective meanings specified below (such meanings to be equally applicable to the singular and plural forms of the terms defined):

"Action" shall mean any claim, action, arbitration, mediation, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before or otherwise involving any Person, Governmental Entity, arbitrator or mediator, whether at law or equity.

"Adjusted EBITDA" shall mean, in U.S. Dollars, the product of four (4) times the EBITDA of Operating Sub (based on the EBITDA Period Financials) during the EBITDA Period.

"Affiliate" shall mean, with respect to any Person, any other Person that controls, is controlled by or is under common control with the first Person.

"Ancillary Documents" shall mean the Escrow Agreement, the Key Employee Agreements and the Non-Employee Stockholder Agreements.

"Anticipated Closing Date" shall mean January 1, 2007, or subject to the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby, on such other date to which the Parties mutually agree in writing.

"Business Day" shall mean any day on which the principal offices of the SEC in Washington, D.C. are open to accept filings, or, in the case of determining a date when any payment is due, any day on which banks are not required or authorized by law or executive order to close in New York; or, in the case of determining the price of a security, any day on which the principal securities exchange for such security is open for trading.

"Closing Net Working Capital" shall mean, with respect to the Company and the Operating Sub, on a consolidated basis, the (i) current assets less (ii) current liabilities (excluding the current portion of long-term Indebtedness, but including any and all Taxes incurred by the Company as a result of the sale of the Excluded Subsidiaries prior to Closing), each as determined as of the Closing Date by the Company in accordance with GAAP, consistently applied, and reflected on the Closing Balance Sheet. For purposes of the calculation of the Closing Net Working Capital, the Closing Net Working Capital shall include all Company Net Option Proceeds.

"Communications Licenses" shall mean the FCC Licenses and the State PUC Licenses.

"Company" shall mean, prior to the Effective Time, Mountain Telecommunications, Inc., a Delaware corporation and following the Effective Time, Company shall mean the Surviving Corporation.

"Company Employee Benefit Plans" shall mean Employee Benefit Plans and any other material employee benefit arrangements or payroll practices, including, without limitation, employment agreements, severance agreements, executive compensation arrangements, incentive programs or arrangements, sick leave, vacation pay, severance pay policies, plant closing benefits, salary continuation for disability, consulting or other compensation arrangements, workers' compensation, retirement, deferred compensation, bonus, stock purchase, hospitalization, medical insurance, life insurance, tuition reimbursement or scholarship programs, any plans providing benefits or payments in the event of a change of control, change in ownership, or sale of a substantial portion (including all or substantially all) of the assets owned or maintained by the Company or an ERISA Affiliate, within the last six years, or to which the Company or an ERISA Affiliate, within the last six years, has contributed or is or was obligated to make payments, in each case with respect to any employees or former employees of the Company or an ERISA Affiliate.

"Company Employee Pension Plans" shall mean Company Employee Benefit Plans which constitute "employee pension benefit plans" as defined in Section 3(2) of ERISA.

"Company Material Adverse Effect" shall mean any change in or effect on the business of the Company and the Operating Sub that, in the aggregate (taking into account all other such changes or effects), is materially adverse to the business, assets, liabilities, financial condition, or results of operations or prospects of the Company and the Operating Sub, taken as a whole, excluding effects resulting from (i) changes in general economic conditions or in the securities markets in general that do not affect the Company in a materially disproportionate manner relative to other companies in the same industry; (ii) changes in the industries in which the Company or the Operating Sub operate (including legal and regulatory changes) that do not specifically relate to the Company or the Operating Sub and that do not affect the Company or the Operating Sub in a materially disproportionate manner relative to other companies in such industry; (iii) any losses of customers or suppliers caused by the announcement or pendency of the Merger; (iv) any delays or cancellations of orders for the Company's or the Operating Sub's products or services caused by the announcement or pendency of the Merger; (v) acts taken pursuant to or in accordance with this Agreement or at the request of the Parent or Eschelon; or (vi) acts of terrorism or war (whether or not declared).

"Company Net Option Proceeds" shall mean the aggregate amount of cash received by the Company in connection with the Company Options that are exercised on or immediately prior to the Closing Date in contemplation of or in connection with the consummation of the Merger and in accordance with the terms of Section 3.6 of this Agreement and the amount of all Tax benefits and credits related thereto.

"Company Welfare Plans" shall mean Company Employee Benefit Plans which constitute "employee welfare benefit plans" within the meaning of Section 3(1) of ERISA.

"Delaware Law" shall mean the Delaware General Corporation Law.

"Dissenting Shares Excess Payments" shall mean any payment in respect of Dissenting Shares in excess of the amount of cash that would have been issuable pursuant to Section 3.1 in respect of such Shares had they never been Dissenting Shares plus expenses associated with such appraisal rights claims. Dissenting Shares Excess Payments shall constitute "Losses" for purposes of Section 10.1.

"Dollar" and "$" shall mean United States Dollars.

"EBITDA" shall mean with respect to Operating Sub, earnings before interest, taxes, depreciation and amortization which, (i) exclude (A) non-recurring items or events and (B) any financial accounting expenses related to the Company Net Option Proceeds; and (ii) with respect to each of the components thereof, is determined in accordance with GAAP and the past practices of the Company and Operating Sub, consistently applied.

"EBITDA Period" shall mean the three (3) month period commencing on the first day of the month that is four (4) months prior to the month of the Anticipated Closing Date and ending on the last day of the full month immediately preceding the month in which the Closing occurs.

"EBITDA Period Financials" shall mean the unaudited balance sheet and the related unaudited statements of earnings and cash flows of the Operating Sub for each month during the EBITDA Period.

"Electric IP" shall mean Electric IP, Inc., an Arizona corporation, its successors and assigns.

"Employee Benefit Plan" shall have the meaning ascribed to such term by Section 3(3) of ERISA.

"Employee Obligations" shall mean any Liabilities of the Company or any of its Subsidiaries for payments to current or former employees, officers or directors of the Company or any of its Subsidiaries pursuant to any contract, commitment, promise or agreement (written or oral) between the Company or any Subsidiary and such Persons.

"Employee Stockholder Letters of Transmittal" shall mean each of those certain Employee Stockholder Letters of Transmittal, dated as of the Closing Date and in the form of Exhibit E attached hereto, to be executed and delivered by Parent and each Key Employee.

"Encumbrances" shall mean any lien, security interest, mortgage, pledge, hypothecation, charge, preemptive right, voting trust, imposition, covenant, condition, right of first refusal, easement or conditional sale or other title retention agreement or other restriction; provided, however, that Encumbrances shall not include any Encumbrances arising under any of the Ancillary Documents.

"Environmental Law" shall mean any Law, common law and any enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the environment or natural resources, including, without limitation, those relating to the use, handling, transportation,

treatment, storage, disposal, release or discharge of Hazardous Material, as in effect as of the date hereof.

"Environmental Permit" shall mean any permit, approval, identification number, license or other authorization required under or issued pursuant to any applicable Environmental Law.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall refer to any trade or business, whether or not incorporated, that, together with the Company, is or ever was treated as a "single employer" within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"Eschelon" shall mean Eschelon Telecom, Inc., a Delaware corporation.

"Escrow Percentage" means, for each Stockholder other than SRPMIC, the percentage set forth opposite such Stockholder's name on Exhibit A hereto under the column "Escrow Percentage."

"Estimated Net Working Capital" shall mean, with respect to the Company and the Operating Sub, on a consolidated basis, the (i) current assets less (ii) current liabilities (excluding the current portion of long-term Indebtedness, but including any and all Taxes incurred by the Company as a result of the sale of the Excluded Subsidiaries prior to Closing), each as determined as of the Closing Date by the Company in accordance with GAAP, consistently applied, and reflected on the Estimated Closing Balance Sheet. For purposes of the calculation of the Estimated Closing Net Working Capital, the Estimated Closing Net Working Capital shall include all Company Net Option Proceeds.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

"Excluded Subsidiaries" shall mean, collectively, Electric IP and MTI Tech Products.

"Existing Scottsdale Switch Agreements" shall mean, collectively, (i) that certain Right To Use Agreement dated as of December 6, 2002 by and between Mountain Telecommunications, Inc., an Arizona corporation and SRPMIC, on behalf of itself and Saddleback Communications Company, as the same may be amended, modified, or replaced and attached hereto as Exhibit H-1; and (ii) that certain Management Agreement dated as of December 6, 2002 by and between Mountain Telecommunications, Inc., an Arizona corporation and Saddleback Communications Company, a division of SRPMIC, as the same may be amended, modified, or replaced and attached hereto as Exhibit H-2.

"Expenses" shall mean, with respect to any Party, all out-of-pocket expenses (including, without limitation, all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its Affiliates) incurred by such Party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and

performance of its obligations pursuant to this Agreement and the consummation of the Merger and all other matters related to the transactions contemplated hereby and the closing of the Merger.

"FCC" means the Federal Communications Commission.

"FCC Consent" means the grant by the FCC of its consent to the transfer of control or assignment of any license, Permit or other instrument of authorization awarded by the FCC to the Company necessary to consummate the transactions contemplated by this Agreement.

"FCC Licenses" means all Company Permits issued by the FCC held by the Company or the Operating Sub.

"Fraud" shall mean the making of a representation by a Party which (i) representation is false, (ii) the Party making the representation knew that the representation was false, (iii) the Party to whom such representation or warranty was made believed such representation or warranty to be true and acted in reliance upon it, and (iv) such Party was damaged thereby.

"Governmental Entity" shall mean any United States Federal, state or local or any foreign governmental, regulatory or administrative authority, agency or commission or any court, tribunal or arbitral body.

"Governmental Order" shall mean any order, writ, judgment, preliminary or permanent injunction, decree, temporary restraining order, stipulation, determination or award entered by or with any Governmental Entity.

"Hazardous Material" shall mean (i) any petroleum, petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls or (ii) any chemical, material or substance defined or regulated as toxic or hazardous or as a pollutant or contaminant or waste under any applicable Environmental Law.

"Indebtedness" shall mean any debt of any type or nature at any time outstanding, secured or unsecured, contingent or otherwise, of a Person, including without limitation, debts for borrowed money (whether or not the recourse of the lender is to the whole of the assets or only to a portion thereof), or debts evidenced by bonds, notes, debentures or similar instruments or representing the balance deferred and unpaid of the purchase price of any property if and to the extent any of the foregoing indebtedness would appear as a liability upon a balance sheet prepared in accordance with GAAP, and will also include, to the extent not otherwise included (i) obligations under a capitalized lease and (ii) obligations secured by a lien or other Encumbrance to which the property or assets owned or held by a Person is subject, whether or not the obligation or obligations secured thereby shall have been assumed.

"Intellectual Property" shall mean all intellectual property rights owned or licensed, including but not limited to (i) inventions, designs, algorithms and other industrial property, and all enhancements and improvements thereto, whether patentable or unpatentable,

and whether or not reduced to practice, and all patents therefor or in connection therewith (including all U.S. and foreign patents, patent applications, patent disclosures, mask works, and all divisions, continuations, continuations-in-part, reissues, re-examinations and extensions thereof); (ii) trademarks, trade names and service marks, trade dress, logos, internet domain names, and other commercial product or service designations, and all goodwill and similar value associated with any of the foregoing, and all applications, registrations, and renewals in connection therewith; (iii) copyrights (whether or not registered) and all registrations and applications for registration thereof, as well as rights to renew copyrights; (iv) trade secrets (as such are determined under applicable law), know-how and other confidential business information, including technical information, marketing plans, research, designs, plans, methods, techniques, and processes, any and all technology, supplier lists, computer software programs or applications, in both source and object code form, technical documentation of such software programs, statistical models, supplier lists, e-mail lists, inventions, sui generis database rights, databases, and data, whether in tangible or intangible form and whether or not stored, compiled or memorialized physically, electronically, graphically, photographically or in writing; (v) any and all other rights to existing and future registrations and applications for any of the foregoing and all other proprietary rights in, or relating to, any of the foregoing, including remedies against and rights to sue for past infringements, and rights to damages and profits due or accrued in or relating to any of the foregoing; and (vi) any and all other intangible proprietary property, information and materials.

"IRS" shall mean the United States Internal Revenue Service.

"Key Employees" shall mean each of the Persons listed on Exhibit D under the heading "Key Employees."

"Key Employee Agreements" shall mean collectively, the Employee Stockholder Letters of Transmittal and the Non-Competition Agreements in the forms of Exhibit E and Exhibit F attached hereto.

"Knowledge" means (i) with respect to the Company, the actual knowledge of the officers of the Company and the Operating Sub, together with the knowledge as would have been obtained after due and reasonable inquiry by such officers; and (ii) with respect to any other Person, the actual knowledge of such Person, together with the knowledge as would have been obtained after due and reasonable inquiry by such Person.

"Law" shall mean any Federal, state, foreign or local statute, law, ordinance, regulation, rule, code, order, judgment, decree, other requirement or rule of law, whether of the United States or any other jurisdiction.

"Liability" shall mean any direct or indirect indebtedness, liability, assessment, expense, claim, loss, damage, deficiency, obligation or responsibility, known or unknown, disputed or undisputed, joint or several, vested or unvested, executory or not, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, determinable or undeterminable, accrued or unaccrued, absolute or not, contingent or not (including any liability under any guarantees, letters of credit, performance credits or with respect to insurance loss

accruals), whether or not required to be reflected in financial statements in accordance with GAAP, and whether due or to become due.

"Minimum Closing Net Working Capital" shall equal the amount that is within +/-$50,000 of zero (0).

"MTI Tech Products" shall mean MTI Tech Products, Inc., an Arizona corporation, its successors and assigns.

"Non-Competition Agreements" shall mean those certain Non-Competition, Non-Solicitation and Confidentiality Agreements, dated as of the Closing Date and in the form of Exhibit F attached hereto, to be executed and delivered by Parent and each Key Employee.

"Non-Employee Stockholders" shall mean the Persons listed on Exhibit D under the heading "Non-Employee Stockholders."

"Operating Sub" shall mean Mountain Telecommunications of Arizona, Inc., a wholly-owned subsidiary of the Company.

"Operating Sub Financials" shall mean, collectively, the EBITDA Period Financials and the Statement of Adjusted EBITDA.

"Permitted Encumbrance" shall mean, (i) Encumbrances imposed by any Governmental Entity for Taxes, assessments or charges not yet due and payable or which are being contested in good faith and by appropriate proceedings, but only to the extent that (A) if adequate reserves with respect thereto are maintained on the books of the Company and its Subsidiaries in accordance with GAAP and (B) such matters are identified in the Company Disclosure Schedules; (ii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Encumbrances arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the Company in accordance with GAAP; (iii) pledges or deposits in connection with worker's compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the performance of any or all of the following: bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; and (v) easements, rights-of-way, restrictions and other similar encumbrances on real property incurred in the ordinary course of business and encroachments (whether or not in the ordinary course of business) which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business thereon.

"Parent Material Adverse Effect" shall mean any change in or effect on the business of the Parent and the Parent Subsidiaries that, individually or in the aggregate (taking into account all other such changes or effects), is, or is reasonably likely to be, materially adverse to the business, assets, liabilities, financial condition or results of operations of the Parent and the Parent Subsidiaries, taken as a whole.

"Person" shall mean an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, syndicate, person (including, without limitation, a "person" as defined in Section 13(d)(3) of the Exchange Act), trust, association, entity or government or political subdivision, agency or instrumentality of a government.

"Scottsdale Switching Platform" shall mean that certain DMS-500 telephone switch and other peripheral telecommunications equipment located at 10190 East McKellips Road, Scottsdale, Arizona 85256.

"Scottsdale Switch Amendment" shall mean that certain Amendment to Scottsdale Switch Agreements to be dated as of the Closing Date and entered into by and among Eschelon, the Company and Saddleback Communications Company, a division of SRPMIC, the terms of which shall govern the respective rights and obligations of the parties in connection with the operation of the Scottsdale Switching Platform and shall be in a form mutually acceptable to Eschelon, the Company and SRPMIC.

"SEC" shall mean the U.S. Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Shares" shall mean the shares of Company Capital Stock.

"Share Percentage" means, with respect to any Stockholder, the quotient equal to the number of Shares owned at Closing by such Stockholder *divided* by the total number of outstanding Shares at Closing. The Share Percentage for each Stockholder is set forth opposite such Stockholder's name on Exhibit A hereto and, with respect to the shares of Class A Common Stock, shall be determined on an as-if converted to Company Common Stock basis in accordance with the Company Charter.

"SRPMIC" means the Salt River Pima-Maricopa Indian Community and its Affiliates including Saddleback Communications Company.

"SRPMIC Stockholder Letter" shall mean that certain Stockholder Letter of Transmittal dated as of the Closing Date, by and between Parent and SRPMIC and substantially in the form of Exhibit I attached hereto.

"Statement of Adjusted EBITDA" shall mean a detailed computation of the Adjusted EBITDA.

"State PUC" shall mean any state and local public service and public utilities commission having regulatory authority over the business of the Company and/or any of its Subsidiaries, as conducted in any given jurisdiction, including, without limitation, the Arizona Corporation Commission.

"State PUC Consent" means the grant by any State PUC of its consent to the transfer, assignment or the Company change of control transactions contemplated by this Agreement.

"State PUC Licenses" shall mean all Company Permits issued or granted by a State PUC and held by the Company or its Subsidiaries.

"Stockholder Closing Documents" shall mean, collectively, the Stockholder Letter of Transmittal, the Key Employee Agreements and the SRPMIC Stockholder Letter.

"Stockholder Letter of Transmittal" shall mean that certain Stockholder Certificate and Representation Letter dated as of the Closing Date and in the form of Exhibit G attached hereto, to be executed and delivered by Parent and each Non-Employee Stockholder.

"Stockholders" shall mean the holders of the outstanding Company Capital Stock.

"Stockholders' Agent" shall mean Jack O. Pleiter.

"Straddle Period" means any taxable period beginning before and ending after the Closing Date.

"Subsidiary" of any Person means any other Person of which at least 50% of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by such first Person.

"Tariff Matters" shall mean fees, charges, penalties, interest or similar amounts assessed or levied by any Governmental Entity on the Company or any of its Subsidiaries for interstate access charges incurred prior to the Closing.

"Tax" shall mean (i) any and all taxes, fees, levies, duties, tariffs, imposts and other charges of any kind (whether or not imposed on the company or on a Subsidiary), imposed by any Governmental Entity or taxing authority, including, without limitation, taxes or other charges on, measured by, or with respect to income, franchise, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value-added or gains taxes; license, registration and documentation fees; and customers' duties, tariffs and similar charges; (ii) any liability for the payment of any amounts of the type described in (i) as a result of being a member of an affiliated, combined, consolidated or unitary group for any Taxable period; (iii) any liability for the payment of amounts of the type described in (i) or (ii) as a result of being a transferee of, or a successor in interest to, any person or as a result of an express or implied obligation to indemnify any person and (iv) any and all interest, penalties, additions to tax and additional amounts imposed in connection with or with respect to any amounts described in (i), (ii) or (iii).

"Tax Return" shall mean any return, report, statement, form or other documentation (including any additional or supporting material and any amendments or supplements) filed or maintained, or required to be filed or maintained, with respect to or in connection with the calculation, determination, assessment or collection of any Taxes.

"Title IV Plans" means Employee Benefit Plans subject to Title IV of ERISA or Section 412 of the Code, to which the Company or any ERISA Affiliate contributes, or has or

has ever had any obligation to contribute, including, but not limited to, any multiemployer plan as defined in Section 3(37) of ERISA, and any multiple employer plan.

"WARN" means the Worker Adjustment and Retraining Notification Act or any state equivalent thereof.

Section 1.2 Table of Definitions. The following terms have the meanings set forth in the Sections referenced below:

Definition	Location
280(G) Stockholder Approval	6.8(b)
Accounting Date	3.2(a)
Acquisition Proposal	6.4(a)
Actual Settlement Amount	10.3(c)
Agreement	Preamble
Annual Financial Statements	4.8(a)
Balance Sheet	4.8(a)
Balance Sheet Date	4.8(a)
Bankruptcy Exception	4.5
Basket	10.5(a)
CERCLA	4.13
Certificate of Merger	2.3
Claim Period	3.4
Closing	2.2
Closing Balance Sheet	3.3(a)
Closing Cash	3.1(b)
Closing Date	2.2
Closing Statement	3.3(a)
Closing Statement Objection Notice	3.3(b)
Closing Statement Resolution Period	3.3(b)
Company	Preamble
Company 401(k) Plan	6.8(a)
Company Board of Directors	4.5
Company Bylaws	4.2
Company Capital Stock	Recitals
Company Charter	4.2
Company Class A Common Stock	Recitals
Company Common Stock	Recitals
Company Confidential Information	4.14(j)
Company Disclosure Schedules	Article IV
Company Intellectual Property	4.14(a)
Company Option Plan	4.3(a)
Company Options	4.3(a)
Company Permits	4.7
Confidentiality Agreement	6.3(b)
Disputing Parties	3.3(b)

ARTICLE II
THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the applicable provisions of Delaware Law, at the Effective Time (as defined in Section 2.3), the Merger Sub shall be merged with and into the Company. As a result of the Merger, the separate corporate existence of the Merger Sub shall cease and the Company shall continue as the surviving corporation of the Merger as a wholly owned subsidiary of the Parent (the "Surviving Corporation").

Section 2.2 Closing. Unless this Agreement shall have been terminated and the Merger herein contemplated shall have been abandoned pursuant to Section 11.1 and subject to the satisfaction or waiver of the conditions set forth in Article VIII, the closing of the transactions contemplated hereby (the "Closing") shall take place at the offices of DLA Piper Rudnick Gray Cary US LLP, 1775 Wiehle Avenue, Suite 400, Reston, Virginia 20190, commencing at 10:00 a.m. local time on the Anticipated Closing Date (the date on which the Closing shall occur being the "Closing Date").

Section 2.3 Effective Time. Immediately upon the Closing, the Parties shall cause the Merger to be consummated by filing a Certificate of Merger in the form attached hereto as Exhibit B (the "Certificate of Merger") with the Delaware Secretary of State in accordance with the relevant provisions of Delaware Law (the date and time of such filing, or such later date and time as may be set forth therein, being the "Effective Date" and the "Effective Time," respectively). For all purposes, the Parties shall deem the Effective Date to be the Closing Date.

Section 2.4 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise provided herein, all the property, rights, privileges, powers and franchises of the Company and the Merger Sub shall vest in the Company as the Surviving Corporation, and all debts, liabilities and duties of the Company and the Merger Sub shall become the debts, liabilities and duties of Company as the Surviving Corporation.

Section 2.5 Certificate of Incorporation; Bylaws; Directors and Officers of Surviving Corporation. Unless otherwise agreed to by the Parent and the Company before the Effective Time, at the Effective Time:

(a) the certificate of incorporation of the Company shall be amended and restated as of the Effective Time to read in its entirety to be identical with the certificate of incorporation of the Merger Sub in effect prior to the Effective Time and, as so amended, shall constitute the certificate of incorporation of the Surviving Corporation until thereafter amended;

(b) the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be adopted as the bylaws of the Surviving Corporation until thereafter amended;

(c) the officers of Merger Sub immediately prior to the Effective Time shall serve in their respective offices of the Surviving Corporation from and after the Effective Time, in each case until their successors are elected or appointed and qualified or until their resignation or removal; and

(d) the directors of Merger Sub immediately prior to the Effective Time shall serve as the directors of the Surviving Corporation from and after the Effective Time, in each case until their successors are elected or appointed and qualified or until their resignation or removal.

ARTICLE III
MERGER CONSIDERATION; EXCHANGE OF CERTIFICATES

Section 3.1 Merger Consideration. On the Effective Date, the shares of Company Capital Stock outstanding immediately prior to the Effective Date, shall, without any action on the part of the Parent, the Merger Sub, the Company or the holder thereof, be converted into the right to receive from the Parent, subject to the terms of this Agreement, the aggregate amount equal to the following:

(a) $40,000,000 in cash (the "Purchase Price"), (i) *plus* or *minus* the EBITDA Adjustment Amount, if any, described in Section 3.2(a) of this Agreement; (ii) *plus* or *minus* the Estimated Adjustment, if any, described in Section 3.2(b) of this Agreement; and (iii) *minus* the amount of any Indebtedness of the Company or the Operating Sub outstanding as of the Closing Date (the "Outstanding Indebtedness"). The aggregate amount of cash consideration to be paid by the Parent for the Shares, as adjusted pursuant to this Section 3.1(a) and the terms of this Agreement, shall be referred to herein as the "Merger Consideration."

(b) Upon the surrender of certificates representing the shares of the Company Capital Stock issued and outstanding immediately prior to the Effective Time in accordance with Section 3.5, each Stockholder shall be allocated and paid the cash amount equal to (collectively, the "Closing Cash"):

(i) the Merger Consideration equal to such Stockholder's Share Percentage (as determined in accordance with the Company Charter) multiplied by the aggregate amount of Merger Consideration, *minus*

(ii) the Escrow Funds equal to such Stockholder's Escrow Percentage multiplied by the aggregate amount of Escrow Funds deposited in the Escrow Account pursuant to Section 3.4, the requirements of Article X and the Escrow Agreement.

(c) Prior to the Effective Date, the Parent shall appoint itself as the exchange agent in the Merger. On the Closing Date, the Parent shall make the applicable payments of Closing Cash to each Stockholder by wire transfer of immediately available funds in United States dollars to such accounts as designated in writing by such Stockholder to the Parent prior to the Closing Date (the "Payment Accounts"). Notwithstanding anything in this Section 3.1(c), any Stockholder that has not provided wire instructions to the Parent will receive payment of the Closing Cash due to such Stockholder via cashiers check, and in such event the Parent shall deliver the requested cashier's check to such Stockholder on the Closing Date.

(d) Notwithstanding anything in this Agreement to the contrary, in accordance with Section 3.7 of this Agreement, Shares issued and outstanding immediately prior to the Effective Time held by a Dissenting Stockholder (as such term is defined in Section 3.7(a) of this Agreement) who has the right to demand payment for and an appraisal of such shares in accordance with Delaware Law shall not be converted into a right to receive any portion of the Merger Consideration unless such Dissenting Stockholder (as such term is defined in Section 3.7(a) of this Agreement) fails to perfect or otherwise loses such holder's right to such payment or appraisal, if any.

Section 3.2 Merger Consideration Adjustment. The Merger Consideration shall be subject to the adjustments set forth in this Section 3.2.

(a) EBITDA Adjustment.

(i) Not more than thirty (30) days but not less than five (5) days prior to the Anticipated Closing Date or such other date as the Company and the Parent shall mutually agree to in writing (the "Accounting Date"), the Company shall deliver the Operating Sub Financials to the Parent. The Operating Sub Financials shall be prepared and certified by the Company's Chief Financial Officer and shall include a breakdown of the separate components of EBITDA for the EBITDA Period, along with a breakdown of the applicable adjustments to EBITDA for such period.

(ii) The Parent shall have ten (10) days to review such Operating Sub Financials after receipt thereof. If, within ten (10) days after receiving the Operating Sub Financials, the Parent objects to the Operating Sub Financials by delivering written notice to the Company stating the basis for such objection (the "Parent EBITDA Objection Notice"), then for

a period of five (5) days following the delivery of such Parent EBITDA Objection Notice to the Company, the Parent and the Company shall use commercially reasonable efforts to resolve to the mutual satisfaction of the Parent and the Company, the objections set forth in the Parent EBITDA Objection Notice. If no resolution is reached within such five-day period, then the parties to the dispute may elect by mutual written agreement to extend the period of negotiation and may elect, by mutual written agreement, to engage a mediator to assist in such negotiation. To the extent that any matter remains unresolved following the foregoing negotiations, the Parent and the Company shall engage an audit partner based in the Phoenix office of Grant Thornton, LLP as the Independent Accounting Firm (as such term is defined in Section 3.3(b) of this Agreement) to review the calculations set forth in the Operating Sub Financials.

(iii) The Independent Accounting Firm shall have thirty (30) days to review such Operating Sub Financials and after reviewing all relevant matters and interviewing such parties as it deems appropriate, the Independent Accounting Firm shall deliver to the Parent and the Company a statement (the "Independent Accountant EBITDA Statement") setting forth its calculations with the respect to the Operating Sub Financials, including the Statement of Adjusted EBITDA. The Statement of Adjusted EBITDA as determined by the Independent Accounting Firm in the form of the Independent Accountant EBITDA Statement (the "Final Operating Sub Financials"), shall be final and binding on the Parties.

(iv) If within ten (10) days after receipt of the Operating Sub Financials, the Parent delivers written notice that the Parent has no objection to such Operating Sub Financials or the Parent does not deliver a Parent EBITDA Objection Notice within the 10-day period, the Operating Sub Financials, including the Statement of Adjusted EBITDA, shall be deemed the Final Operating Sub Financials and shall be binding upon each Party.

(v) The Final Operating Sub Financials shall be used as the basis for determining the EBITDA Adjustment Amount, if any. The Parent and the Company shall each bear one-half of the cost of engaging the Independent Accounting Firm in connection with the preparation and delivery of the Independent Accountant EBITDA Statement.

(vi) Subject to the following, the Merger Consideration shall be increased or decreased at Closing in accordance with this Section 3.2(a)(vi) and Section 3.1(a)(i) by an amount (the "EBITDA Adjustment Amount") equal to the difference between (A) the product of (x) the Adjusted EBITDA *multiplied* by (y) $5.85, *less* (B) $40,000,000. If the EBITDA Adjustment Amount is *negative*, the amount of Merger Consideration shall be *decreased* at Closing in accordance with Section 3.1(a)(i) by the EBITDA Adjustment Amount. If the EBITDA Adjustment Amount is *positive*, the amount of Merger Consideration shall be *increased* at Closing in accordance with Section 3.1(a)(i) by the EBITDA Adjustment Amount; provided, however, the maximum positive EBITDA Adjustment Amount pursuant to this Section 3.2(a) shall not exceed $5,000,000. If the EBITDA Adjustment Amount is zero (0), there shall not be any adjustment in the amount of Merger Consideration at Closing pursuant to Section 3.1(a)(i).

(b) Net Working Capital Adjustment. The Company shall prepare and deliver to the Parent on the Closing Date, a statement (the "Estimated Closing Statement") setting forth (i) an estimated consolidated balance sheet of the Company as of the close of business on the

Closing Date (the "Estimated Closing Balance Sheet"); and (ii) the Estimated Closing Net Working Capital, based on the Estimated Closing Balance Sheet, together with all work papers and supporting calculations relating thereto. The Estimated Closing Balance Sheet upon which the Estimated Closing Net Working Capital is based shall be prepared in accordance with GAAP, consistently applied (notwithstanding anything else contained herein, including the inclusion in current liabilities of any and all Taxes incurred by the Company as a result of the sale of the Excluded Subsidiaries prior to Closing). The "Estimated Adjustment" (which may be a positive or negative number) shall equal (i) the Estimated Closing Net Working Capital reflected on the Estimated Closing Balance Sheet, *minus* (ii) the Minimum Closing Net Working Capital Amount. If the Estimated Adjustment is positive (i.e., the Estimated Closing Net Working Capital is greater than $50,000), the amount of Merger Consideration shall be increased at Closing in accordance with Section 3.1(a)(ii) by the amount of the Estimated Adjustment. If the Estimated Adjustment is negative (i.e., the Estimated Closing Net Working Capital reflects a working capital deficit of more that $50,000), the amount of Merger Consideration shall be decreased at Closing in accordance with Section 3.1(a)(ii) by the amount of the Estimated Adjustment. If the Estimated Closing Net Working Capital is equal to or less than $50,000 and reflects a working capital deficit of not more than $50,000, the Estimated Adjustment shall be zero (0). For purposes of the calculation of the Estimated Adjustment, if any, pursuant to this Section 3.2(b), the Estimated Net Working Capital shall include all Company Net Option Proceeds.

Section 3.3 Post-Closing Merger Consideration Adjustment.

(a) As soon as practicable (and in any event within 60 days following the Closing Date), the Parent shall prepare and deliver to the Stockholders' Agent a "Closing Statement" consisting of (i) a consolidated balance sheet of the Company as of the close of business on the Closing Date (the "Closing Balance Sheet"); and (ii) the Closing Net Working Capital, based on the Closing Balance Sheet, together with all work papers and all supporting calculations relating thereto. The Closing Balance Sheet shall be prepared in accordance with GAAP, consistently applied (notwithstanding anything else contained herein, including the inclusion in current liabilities of any and all Taxes incurred by the Company as a result of the sale of the Excluded Subsidiaries prior to Closing).

(b) The Closing Balance Sheet, together with the Closing Net Working Capital, as set forth in the Closing Statement, shall be final, binding and conclusive on the Parties unless the Stockholders' Agent, on behalf of the Stockholders (collectively, the "Disputing Parties") provides written notice of any objections thereto to the Parent within 30 days after the Stockholders' Agent's receipt of the Closing Statement, setting forth in reasonable detail the amounts in dispute and the basis for such dispute and the Disputing Parties' calculation of the disputed portion of the Closing Statement (a "Closing Statement Objection Notice"). During such 30-day period, the Parent shall, and shall cause its Representatives to, make reasonably available to the Disputing Parties, on a timely basis, such of the Surviving Corporation's books, records and appropriate personnel as the Disputing Parties may reasonably request in connection with its review of the Closing Statement. If the Disputing Parties deliver a Closing Statement Objection Notice as provided above, the Disputing Parties and the Parent shall attempt in good faith to resolve the Disputing Parties' objections, and any resolution by them as to any disputed amounts shall be final, binding and conclusive on the Parent and all of the Stockholders. If the Disputing Parties and

the Parent are unable to resolve, despite good faith negotiations, all disputes reflected in the Closing Statement Objection Notice within 10 days of the Disputing Parties' delivery of a Closing Statement Objection Notice (the "Closing Statement Resolution Period"), the Disputing Parties and the Parent shall, within 10 days after expiration of the Closing Statement Resolution Period, submit any such unresolved dispute to the Phoenix office of Grant Thornton, LLP (the "Independent Accounting Firm"). The Parent and the Stockholders' Agent shall provide to the Independent Accounting Firm all work papers, subsidiary ledgers and supporting calculations relating to the unresolved disputes requested by the Independent Accounting Firm to the extent available to the Parent or its Representatives or the Stockholders' Agent or its Representatives. The Parent and the Stockholders' Agent shall be afforded the opportunity to present to the Independent Accounting Firm (with copies to be provided to the other Party) any material related to the unresolved disputes and to discuss the issues with the Independent Accounting Firm. The Independent Accounting Firm shall determine the amount of each of the items being disputed in the Closing Statement Objection Notice within 30 days after the submission of the unresolved disputes to the Independent Accounting Firm, and such determinations shall be final, binding and conclusive on the Parties. The fees, costs and expenses of the Independent Accounting Firm shall be borne equally by the Parties. The Closing Balance Sheet and the Closing Net Working Capital, as each may be revised to reflect the resolution of any and all disputes by the Parties or the determination by the Independent Accounting Firm, shall be deemed the final "Closing Balance Sheet" and the final "Closing Net Working Capital," respectively. For purposes of the calculation of the Closing Net Working Capital in accordance with this Section 3.3, the Closing Net Working Capital shall be deemed to include all Company Net Option Proceeds.

(c) Upon final determination of the Closing Balance Sheet and the Closing Net Working Capital, respectively, pursuant to this Section 3.3, the Stockholders or the Parent, as applicable, shall pay the other Party the following amounts (each, a "Payment"):

(i) if the Closing Net Working Capital set forth in the Closing Balance Sheet exceeds the Estimated Closing Net Working Capital set forth in the Estimated Closing Balance Sheet, the amount by which the Closing Net Working Capital exceeds the Estimated Closing Net Working Capital (plus interest on such amount accrued from the Closing Date through the date of payment at the prime rate as reported in *The Wall Street Journal, Eastern Edition* for the date of such final determination) shall be paid in cash by the Parent to the Stockholders based upon each Stockholder's Share Percentage, within 10 days after the Closing Balance Sheet becomes final and binding on the Parties pursuant to Section 3.3(b); or

(ii) if the Estimated Closing Net Working Capital set forth in the Estimated Closing Balance Sheet exceeds the Closing Net Working Capital set forth in the Closing Balance Sheet, the amount by which the Estimated Closing Net Working Capital exceeds the Closing Net Working Capital (plus interest on such amount accrued from the Closing Date through the date of payment at the prime rate as reported in *The Wall Street Journal, Eastern Edition* for the date of such final determination) shall be paid from the Escrow Funds to the Parent within 10 days after the Closing Balance sheet becomes final and binding on the Parties pursuant to Section 3.3(b).

(d) Any amounts payable pursuant to Section 3.3(c) shall be made by wire transfer or delivery of other immediately available funds to the account(s) designated by the

payee. If the Stockholders shall be required to pay the Parent any amounts due under Section 3.3(c) and there are available Escrow Funds remaining in the Escrow Account, then upon written notice from the Parent to the Stockholders' Agent, the Parent and the Stockholders' Agent shall give the Escrow Agent a joint written notice instructing the Escrow Agent to pay any amount due under Section 3.3(c) to the Parent from the Escrow Funds, and such payment shall satisfy the indemnification obligation set forth in Section 10.1(a)(ii). In addition to, and not in lieu of any other remedies available to any Party hereunder, any Party shall be entitled to equitable relief, including specific performance or injunctive relief, as a remedy for another Party's failure to promptly execute a joint written notice in accordance to this Section 3.3(d). Any Payment by the Stockholders shall be made by each Stockholder based upon such Stockholder's Share Percentage. Any Payment required pursuant to Section 3.3(c)(i) shall be made by the Parent to the Stockholders' Agent for the benefit of the Stockholders, and the Stockholders' Agent shall forthwith make all requisite payments to the Stockholders as a result of such Payment.

Section 3.4 Escrow Fund. At the Effective Time, the amount of Merger Consideration equal to fifteen percent (15%) of the Purchase Price (the "Escrow Funds") shall be deposited into an escrow account (the "Escrow Account") in accordance with this Agreement and the Escrow Agreement in the form attached hereto as Exhibit C (the "Escrow Agreement"). Parent shall deposit the Escrow Funds with Wells Fargo Bank, National Association (the "Escrow Agent"), by wire transfer of immediately available funds to such bank and account specified by the Escrow Agent. On the six-month anniversary of the Closing Date, (the "First Distribution Date"), to the extent that there are no pending claims for Losses for which any Parent Indemnified Person is seeking indemnification from the Escrow Funds pursuant to this Agreement and the Escrow Agreement, the Parent and the Stockholders' Agent shall deliver joint written instructions to the Escrow Agent to distribute to the Stockholders, based on their respective Escrow Percentages, the amount equal to thirty-three percent (33%) of the Escrow Funds then remaining in the Escrow Account. Following the First Distribution Date, the remainder of the Escrow Funds shall be held by the Escrow Agent in the Escrow Account until the date that is the earlier of (a) eighteen (18) months following the execution date of this Agreement; and (b) twelve months following the Closing Date (the "Claim Period"), subject to and in accordance with the terms and conditions set forth in this Agreement and the Escrow Agreement.

Section 3.5 Payment for Shares; Lost Stock Certificates; Closing of Transfer Books.

(a) At the Effective Time, each holder of a certificate or certificates theretofore representing issued and outstanding Shares entitled to receive the Merger Consideration therefor may surrender such certificates to the Surviving Corporation and receive in exchange therefor, the Merger Consideration as provided in Section 3.1 immediately upon such surrender and execution. In case any payment pursuant to this Section 3.5 is to be made to a holder other than the registered owner of a surrendered certificate, it shall be a condition of such payment that the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer to such holder and that all applicable transfer and other similar Taxes with respect to any transactions involving the certificate prior to or at the Effective Time shall have been paid. Until surrendered in accordance with the provisions of this Section 3.5, the certificate or certificates which immediately prior to the Effective Time represented all the issued

and outstanding Shares shall represent for all purposes only the right to receive the Merger Consideration.

(b) In the event any certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, Parent shall issue in exchange for such lost, stolen or destroyed certificate the Merger Consideration payable in exchange therefor pursuant to this Article III. The Board of Directors of the Surviving Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate to give the Surviving Corporation an indemnity against any Action that may be made against the Surviving Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

(c) At the Effective Time, the stock transfer books of the Company shall be closed and no transfer of Shares shall thereafter be made. If, after the Effective Time, certificates are presented to the Surviving Corporation or the disbursing agent, they shall be canceled and exchanged for the Merger Consideration in accordance with Section 3.1. From and after the Effective Time, no Shares shall be deemed to be outstanding, and holders of certificates shall cease to have any rights with respect thereto except as provided herein or by Law.

(d) At the Effective Time, each outstanding share of common stock of Merger Sub shall be converted into one fully paid and non-assessable share of common stock of the Surviving Corporation and shall constitute the only shares of capital stock of the Surviving Corporation outstanding immediately after the Effective Time.

Section 3.6 Company Options. The Company shall take all necessary action, including obtaining the consent and release of Persons to whom the Company has issued or granted Company Options (or to whom the Company has granted or promised to issue Company Options or made any commitment to do any of the foregoing), to ensure that, on or prior to the Effective Time, (a) each Company Option that is outstanding and unexercised, whether or not vested, shall be cancelled and terminated (and not assumed by the Parent); and (b) all Company Option Plans are terminated and no longer in force and effect.

Section 3.7 Dissenting Shares.

(a) For purposes of this Agreement, "Dissenting Shares" means Company Capital Stock (i) held as of the Effective Time by a Stockholder who has not voted such Company Capital Stock in favor of the adoption of this Agreement and the Merger (each such Stockholder, a "Dissenting Stockholder") and (ii) with respect to which appraisal shall have been duly demanded and perfected in accordance with Delaware Law and not effectively withdrawn or forfeited prior to the Effective Time.

(b) Notwithstanding anything to the contrary contained in this Article III, Dissenting Shares shall not be converted into or represent the right to receive Merger Consideration unless such Stockholder shall have forfeited his right to appraisal under Delaware Law or withdrawn, with the consent of the Company, his or her demand for appraisal. If such Stockholder has so forfeited or withdrawn his or her right to appraisal of Dissenting Shares, then as of the occurrence of such event, such holder's Dissenting Shares shall cease to be Dissenting

Shares and shall be converted into and represent the right to receive the Merger Consideration issuable in respect of such Company Capital Stock.

(c) The Company shall give the Parent (i) prompt notice of any demands for purchase of any shares of Company Capital Stock by Dissenting Stockholders, withdrawals of such demands, and any other instruments served pursuant to the Delaware Law and received by the Company and (ii) the opportunity to participate in all negotiations and proceedings with Dissenting Stockholders under the Delaware Law. The Company shall not, except with the prior written consent of the Parent, voluntarily make any payment with respect to any demands by Dissenting Stockholders for the purchase of the Dissenting Shares or offer to settle or settle any such demands.

Section 3.8 GAAP. Unless otherwise noted, EBITDA (or the components thereof), Adjusted EBITDA (or the components thereof), all working capital calculations and all other financial measures used in this Agreement will be determined in accordance with generally accepted accounting principles applied on a consistent basis in effect on the date hereof as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States ("GAAP").

Section 3.9 Transfer Taxes. Pursuant to Section 10.5, the Stockholders shall pay for each Stockholder's Transfer Taxes, and all fees and duties, if any, imposed on such Stockholder in connection with the sale and transfer of the Shares and Parent shall be entitled to deduct or withhold or cause to be deducted or withheld from the consideration otherwise payable to or on behalf of such Stockholder pursuant to this Agreement at any time following the Closing such amounts, if any, required to be deducted or withheld in accordance with applicable Law.

Section 3.10 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and the Merger Sub, the officers and directors of the Company and the Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and shall take, all such lawful and necessary action, so long as such action is not inconsistent with this Agreement.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF COMPANY

The Company hereby represents and warrants to Parent that, except as otherwise set forth in the disclosure schedules referred to in this Agreement and attached hereto (the "Company Disclosure Schedules") (which disclosures shall delineate the section or subsection to which they apply but shall also qualify such other sections or subsections of this Article IV to the extent that it is reasonably apparent on its face from a reading of the particular disclosure item that such disclosure is applicable to such other section or subsection), each of the following representations and warranties set forth in this Article IV are, as of the date hereof, and will be (unless made as of a specified date), as of the Closing Date, true and correct:

Section 4.1 Organization and Qualification; Subsidiaries. Each of the Company and the Operating Sub has been duly incorporated and is validly existing and in good standing under the Laws of the state of its incorporation and has the requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Each of the Company and the Operating Sub is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing that could not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Section 4.1 of the Company Disclosure Schedules sets forth a list of all jurisdictions in which the Company and the Operating Sub are qualified to do business.

Section 4.2 Certificate of Incorporation and Bylaws. The minute books and records of the Company and the Operating Sub, as previously delivered to the Parent, are true, correct and complete as of the date hereof and as of the Closing. The Company has maintained the minute books and stock records of the Company and the Operating Sub in accordance with commercially reasonable business practices. True and complete copies of the Company's certificate of incorporation, as amended to date (the "Company Charter"), the Company's bylaws, as amended to date (the "Company Bylaws") and the organizational documents for the Operating Sub, as amended to date (the "Subsidiary Organizational Documents," and together with the Company Charter and Company Bylaws, the "Organizational Documents"), have been provided to Parent. The Organizational Documents are in full force and effect. Neither the Company nor the Operating Sub is in violation of any of the provisions of the Organizational Documents.

Section 4.3 Capitalization.

(a) The authorized capital stock of Company consists solely of 4,000,000 shares of Company Common Stock, of which 999,999 shares have been designated as Company Class A Common Stock, and 1,000,000 shares of Serial Preferred Stock, of which no shares have been designated. As of the date hereof, (i) 999,999 shares of Company Class A Common Stock are issued and outstanding, all of which are duly authorized, validly issued, fully paid and nonassessable, and 1,000,000 shares of Company Common Stock are issued and outstanding, all of which are duly authorized, validly issued, fully paid and nonassessable. As of the date hereof, all of the issued and outstanding shares of Company Class A Common Stock and Company

Common Stock are owned by the Stockholders and comprise all of the issued and outstanding shares of Company Capital Stock. There are 139,123 vested Company Options to purchase shares of Company Common Stock pursuant to the Company's 2005 Stock Plan (the "Company Option Plan") and there are no Company Options to purchase shares of Company Common Stock pursuant to the Company Option Plan or otherwise that are not vested. There are no (i) options, warrants, stock appreciation rights (or other securities that have their value tied to any other securities of the Company), or other rights, agreements, arrangements or commitments of any character to which the Company is a party or by which the Company is bound obligating the Company to issue or sell any shares of capital stock of, or other equity interests in, the Company (collectively, the "Company Options").

(b) There are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of Company Capital Stock. There are no outstanding contractual obligations of the Company to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any entity or Person. There are no outstanding options, rights (preemptive or otherwise), warrants, calls, convertible securities or commitments or any other arrangements to which the Company is a party requiring or restricting the issuance, sale or transfer of any equity securities of the Company or any securities convertible directly or indirectly into equity securities of the Company, or evidencing the right to subscribe for any equity securities of the Company, or giving any Person any rights with respect to the capital stock of the Company. There are no voting agreements, voting trusts, other agreements (including cumulative voting rights), commitments or understandings with respect to the Company Capital Stock.

(c) Neither the Company, nor any Affiliate, representative, officer, employee, director, shareholder or agent of the Company is a party to or is bound by any agreement (other than this Agreement) with respect to any Acquisition Proposal.

Section 4.4 Subsidiaries; Investments. As of the date hereof, the Operating Sub and the Excluded Subsidiaries are the only Subsidiaries of the Company. Each of the Company's Subsidiaries is wholly owned by the Company. As of the Closing Date, the Company shall have divested itself of all ownership of each of the Excluded Subsidiaries so that the Operating Sub is the only Subsidiary of the Company. Other than the Operating Sub and the Excluded Subsidiaries, the Company does not own an equity interest in any Person.

Section 4.5 Execution and Effect of Agreement. The Company has all necessary corporate power and authority to execute and deliver this Agreement and the other Ancillary Documents to which it is a party, to perform its obligations hereunder and to consummate the transactions contemplated hereby and under the Ancillary Documents to which it is a party. The execution and delivery of this Agreement and the other Ancillary Documents to which the Company is a party and the consummation by the Company of the transactions contemplated hereby and thereby have been duly and validly authorized by the Company's board of directors (the "Company Board of Directors" and, other than the approval of the Stockholders pursuant to Delaware Law, the Company's stockholders and no other proceeding on the part the Company or the Company's stockholders is necessary to authorize this Agreement or to consummate the transactions contemplated hereby or under any other the Ancillary Document to which the Company is a party. This Agreement and the other Ancillary Documents have been or will be

duly executed and delivered by Company and, assuming the due authorization, execution and delivery by the other parties hereto, each such agreement constitutes a legal, valid and binding obligations of Company, enforceable against Company in accordance with its terms, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of remedies (whether in a proceeding at law or in equity) (the "Bankruptcy Exception").

Section 4.6 No Conflict; Required Filings and Consents.

(a) The execution and delivery of this Agreement by the Company or any other Ancillary Document to which it is a party do not, and the performance by the Company of its obligations hereunder and under any Ancillary Document to which it is a party and the consummation of the Merger will not, subject to the receipt of the consents, approvals, permits and authorizations, and the making of the declarations and filings, required under applicable Laws or listed in Section 4.6(b) of the Company Disclosure Schedules: (i) conflict with or violate any provision of the Organizational Documents, (ii) conflict with or violate any Law applicable to the Company or by which any property or asset of the Company is bound or affected, or (iii) result in any material breach of or constitute a material default (or an event which with the giving of notice or lapse of time or both could reasonably be expected to become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a Encumbrance (other than a Permitted Encumbrance) on any material property or asset of the Company or the Operating Sub pursuant to, any Material Contract.

(b) Except as set forth on Section 4.6(b) of the Company Disclosure Schedules, the execution and delivery of this Agreement by the Company or any other Ancillary Document to which it is a party do not, and the performance by the Company of its obligations hereunder and under any Ancillary Document to which it is a party and the consummation of the Merger will not, require any consent, approval, authorization or permit of, or filing by the Company or the Operating Sub with or notification by the Company or the Operating Sub to, any Governmental Entity or any other Person that is a third party, except pursuant to (i) the FCC Consent and the State PUC Consents required by any applicable Laws and (ii) the filing and recordation of the Certificate of Merger as required by Delaware Law.

Section 4.7 Permits; Compliance with Laws.

(a) The businesses of the Company and the Operating Sub are not being conducted in violation of any Law of any Governmental Entity (including the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC and all applicable State PUCs), except for possible violations that would not have a Company Material Adverse Effect. The Company and the Operating Sub are in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for the Company and the Operating Sub to own, lease and operate their respective properties or to carry on their respective businesses as they are now being conducted (the "Company Permits"), except where the failure to have any of the Company Permits would not have a Company Material Adverse Effect, and, as of the date of this Agreement, no suspension or cancellation of any of the Company Permits is

pending or, to the Knowledge of the Company, threatened in writing, except where the suspension or cancellation of any of the Company Permits would not have a Company Material Adverse Effect. Section 4.7 of the Company Disclosure Schedules contains a complete and correct list of the Company Permits (including the Communications Licenses) held by the Company and the Operating Sub.

(b) The Company and the Operating Sub, as the case may be, are the authorized legal holders or otherwise have rights to the Communications Licenses, which licenses constitute all of the material Licenses from the FCC and the State PUCs that are necessary or required for and/or used in the operation of its business as it is now being conducted, except where the failure to have any of the Communications Licenses would not have a Company Material Adverse Effect. All the Communications Licenses were duly obtained and are valid and in full force and effect, unimpaired by any condition, except those conditions that may be contained within the terms of such Communications Licenses or which would not have a Company Material Adverse Effect. There is not now pending or, to the Knowledge of the Company, threatened in writing, any action by or before the FCC or any State PUC in which the requested remedy is the revocation, suspension, cancellation, rescission or modification of any of the Communications Licenses which would have a Company Material Adverse Effect.

Section 4.8 Financial Statements; Name.

(a) Copies of each of (i) the audited consolidated balance sheet of the Company and its Subsidiaries and the related audited consolidated statements of earnings and cash flows of the Company and its Subsidiaries for the fiscal years ending December 31, 2005, December 31, 2004 and December 31, 2003 (the "Annual Financial Statements") and (ii) the unaudited consolidated balance sheet of the Company and its Subsidiaries (the "Balance Sheet") and the related unaudited consolidated statements of earnings and cash flows of the Company and its Subsidiaries for the 4 months ending April, 2006 (collectively, with the Balance Sheet, the "Interim Financial Statements" and, together with the Annual Financial Statements, the "Financial Statements") have been provided to the Parent. Each of the Financial Statements (including the footnotes thereto) is complete and correct, is in accordance with the books and records of the Company and its Subsidiaries (which, in turn, are accurate and complete), presents fairly and accurately the financial position, assets and liabilities and results of operations and cash flows of the Company and its Subsidiaries at the dates and for the periods indicated and has been prepared in accordance with GAAP. As of the date of the Balance Sheet (the "Balance Sheet Date"), neither the Company nor its Subsidiaries has any Indebtedness or other Liability (whether accrued, absolute, contingent or otherwise, and whether due or to become due) which is not disclosed in the Financial Statements (including the footnotes thereto). Neither the Company nor any of its Subsidiaries has incurred since the Balance Sheet Date any Indebtedness or other Liability (whether accrued, absolute, contingent or otherwise, and whether due or to become due), other than those incurred for trade or business obligations incurred after the Balance Sheet Date in the ordinary course of business consistent with past practice.

(b) Each of the Financial Statements (including, in each case, any notes thereto) was prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto) and each presented fairly, in all material respects, the financial position of the Company and its Subsidiaries as at the

respective dates thereof and its results of operations, stockholders' equity and cash flows for the respective periods indicated therein, except as otherwise noted therein (subject, in the case of unaudited statements, to normal and recurring immaterial year-end adjustments).

(c) Except as and to the extent set forth or reserved against on the Balance Sheet, neither the Company nor the Operating Sub has any Liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) that would be required to be reflected on the Balance Sheet or in notes thereto prepared in accordance with GAAP, except for immaterial Liabilities incurred since the Balance Sheet Date in the ordinary course of business consistent with past practice.

(d) The accounts receivable reflected in the Financial Statements arose in the ordinary course of business and consistent with past practice and represent valid receivables not subject to defense, offsets, returns, set off, counter claim, allowances or credits of any kind, and are current, represent bona fide claims against debtors for sales or services performed or other charges, and all goods sold or services performed that gave rise to such accounts were delivered or performed in all material respects in accordance with applicable orders, contracts or customer requirements. Allowances for doubtful accounts and returns have been prepared in accordance with GAAP consistent with the past practices of the Company and the Operating Sub. The accounts receivable of the Company and the Operating Sub arising after the Balance Sheet Date and prior to the date hereof arose in the ordinary course of business and consistent with past practice. No agreement for deduction or discount has been made with respect to any accounts receivable.

(e) Since its inception, the Company and the Operating Sub have used the names set forth on Section 4.8(e) of the Company Disclosure Schedules in conducting their business and other affairs.

Section 4.9 Absence of Certain Changes or Events. Except as set forth on Section 4.9 of the Company Disclosure Schedules, or as otherwise contemplated by this Agreement or any other Ancillary Document, since the Balance Sheet Date, each of the Company and the Operating Sub has conducted its business only in the ordinary course consistent with past custom and practice. Except as forth on Section 4.9 of the Company Disclosure Schedules, or as otherwise contemplated by this Agreement or any other Ancillary Document, since the Balance Sheet Date there has not been any:

(a) change in the Company's or any the Operating Sub's operations, condition (financial or otherwise), operating results, assets, liabilities, employee, contractor, agent, customer or supplier relations or business prospects that have had or could reasonably be expected to have a Company Material Adverse Effect;

(b) loan or advance by the Company or the Operating Sub to any Person other than for services provided to customers of the Company's or the Operating Sub's businesses on credit in the ordinary course of business consistent with past custom and practices;

(c) declaration, setting aside, or payment of any dividend or other distribution in respect of the Shares (or any other equity securities of the Company or any of its Subsidiaries),

any direct or indirect redemption, purchase or other acquisition of any Shares (or any other equity securities of the Company or any of its Subsidiaries) or payment of principal or interest on any note, bond, debt instrument or debt to any Affiliate;

(d) incurrence of any indebtedness or other Liability, except current Liabilities incurred in connection with or for services rendered or goods supplied in the ordinary course of business consistent with past custom and practices, Liabilities on account of Taxes and governmental charges (other than penalties, interest or fines in respect thereof) and obligations or other Liabilities incurred by virtue of execution of this Agreement;

(e) issuance by the Company or any of its Subsidiaries of any notes, bonds, or other debt securities or any equity securities or securities convertible into or exchangeable for any equity securities of the Company or any of its Subsidiaries;

(f) cancellation, waiver or release by the Company or the Operating Sub of any debts, rights or claims, except in the ordinary course of business consistent with past custom and practices or, except as disclosed on Schedule 4.9(f);

(g) amendment of any of the Organizational Documents;

(h) change in accounting principles, methods or practices (including, without limitation, any change in depreciation or amortization policies or rates) utilized by the Company or any of its Subsidiaries;

(i) sale, assignment, lease, license or transfer by the Company or the Operating Sub of any tangible assets that are, individually or in the aggregate, material to the Company's or the Operating Sub's business, other than in the ordinary course of the Company's or the Operating Sub's business consistent with past practice or as required by Section 6.11 of this Agreement;

(j) capital expenditures or commitments therefor by the Company or any of its Subsidiaries in excess of $50,000;

(k) Encumbrance, except for Permitted Encumbrances, on any asset (tangible or intangible) of the Company or the Operating Sub;

(l) sale, assignment, lease, license, transfer or Encumbrance by the Company or the Operating Sub of any of their respective Intellectual Property or other intangible assets, or disclosed any material proprietary confidential information to any Person, or abandoned or permitted to lapse any of its Intellectual Property or other intangible asset other than in the ordinary course of business consistent with past custom and practice or as required by Section 6.11 of this Agreement;

(m) adoption, amendment or termination of any Company Employee Benefit Plan;

(n) change in the employment terms for any employee or agent or provision or grant of any bonus or any wage, salary or compensation increase to any director, officer,

employee or sales representative, group of employees or consultants or increase in the benefits provided under any Company Employee Benefit Plan;

(o) material modification, termination, waiver, amendment or other alteration or change in the terms and provisions of any Material Contract or license that is not reflected on Section 4.11 of the Company Disclosure Schedules;

(p) making or revocation of, or change to, any Tax election, or settlement of any matter relating to Taxes;

(q) extraordinary losses or waiver of any rights of material value, whether or not in the ordinary course of business or consistent with past practice;

(r) delay or postponement of the payment of any accounts or commissions payable or any other Liability, obligation, agreement or negotiation with any party to extend the payment date of any accounts or commissions payable or acceleration of the collection of any notes, accounts or commissions receivable under any of the Material Contracts;

(s) charitable contributions or pledges by or to the Company the Operating Sub;

(t) damage, destruction or casualty loss exceeding in the aggregate $25,000 whether or not covered by insurance;

(u) adoption, amendment or termination of any Company Employee Benefit Plan;

(v) increase in the benefits provided under any Company Employee Benefit Plan; or

(w) agreement, whether orally or in writing, to do any of the foregoing in clauses (a) through (v) and there has not been any occurrence or event not included in clauses (a) through (v) that has had or could reasonably be expected to have a Company Material Adverse Effect.

Section 4.10 Employee Benefit Plans.

(a) Section 4.10(a) of the Company Disclosure Schedules contains a complete and correct list of all Company Employee Benefit Plans. Section 4.10(a) of the Company Disclosure Schedules identifies all Company Employee Benefit Plans that are Company Welfare Plans and provide for continuing benefits or coverage for any participant or beneficiary of a participant after such participant's termination of employment, except coverage or benefits required by Part 6 of Title I of ERISA or Section 4980B of the Code if paid 100% by the participant or beneficiary. No Company Employee Benefit Plans is a plan subject to Title IV of ERISA. None of the Company or its ERISA Affiliates has or had after September 25, 1980, an obligation to contribute to a "multiemployer plan" within the meaning of Section 3(37) or ERISA or a "multiple employer plan" subject to Code Section 413(c).

(b) Except as set forth on Section 4.10(b) of the Company Disclosure Schedules:

(i) True, complete and correct copies of the following documents, with respect to each of the Company Employee Benefit Plans, have been delivered to Parent: (A) all plan documents, including trust agreements, insurance policies and service agreements, and amendments thereto, (B) the most recent Form 5500, any financial statements attached thereto and those for the prior three years and the "top hat" notice filed with the Department of Labor with respect to any applicable Company Employee Pension Plan, (C) the last Internal Revenue Service determination letter and the application and supporting documentation and correspondence submitted to the Internal Revenue Service with respect thereto, (D) summary plan descriptions, (E) the most recent actuarial report and those for the prior three years, (F) the most recent nondiscrimination, top heavy and maximum contribution testing results and those for the prior three years, and (G) written descriptions of all non-written agreements relating to any such plan.

(ii) Each Company Employee Benefit Plan conforms in all material respects with all applicable provisions of ERISA, the Code and any other applicable Laws (including the rules and regulations thereunder).

(iii) Each Company Employee Benefit Plan intended to qualify under Section 401 of the Code is so qualified in form and all trusts maintained pursuant thereto are exempt from federal income taxation under Section 501 of the Code, and nothing has occurred with respect to the operation of such plans which reasonably could be expected to cause the loss of such qualification or exemption or the imposition of any Encumbrance, penalty or Tax under ERISA or the Code, and neither the Company nor its ERISA Affiliates have received any notice (including, without limitation, any notice of audit, investigation, penalty, liability for non-payment of Tax or other noncompliance) concerning a Company Employee Benefit Plan from the Internal Revenue Service, the Department of Labor or the Pension Benefit Guaranty Corporation within the four years preceding the date of this Agreement.

(iv) There are no pending, or to the Knowledge of the Company, threatened, Actions asserted or instituted by or against any Company Employee Benefit Plan, the assets of any of the trusts under such plan or by or against the plan sponsor, plan administrator, or any fiduciary thereof (other than routine benefit claims) and to the Knowledge of the Company, there exist no facts that could form the basis for any such Action.

(v) Except as set forth on Section 4.10(b) of the Company Disclosure Schedules, each Company Employee Benefit Plan has been maintained in accordance with its plan documents and with all applicable provisions of the Code and ERISA (including the rules and regulations thereunder) and other applicable Law, and none of the Company, any ERISA Affiliate, any other "party in interest" or "disqualified person" with respect to the Company Employee Benefit Plans has engaged in any "prohibited transaction" within the meaning of Section 4975 of the Code or Title I, Part 4 of ERISA.

(vi) No Company Employee Benefit Plan contains any provision that would prohibit the transactions contemplated by this Agreement or which would give rise to any

accelerated vesting, severance, termination or other payments or Liabilities as a result of the transactions contemplated by this Agreement, and no payment is owed by or may become due from the Company to any director, officer, employee or agent of the Company or any ERISA Affiliate that may be non-deductible by the Company by reason of Section 280G of the Code or subject to Tax under Section 4999 of the Code; nor will the Company, the Surviving Corporation or Parent be required to "gross up" or otherwise compensate any Person due to the imposition of any excise Tax under Section 4999 of the Code.

(vii) Neither the Company nor any of its Subsidiaries has any actual or contingent Liability with respect to any Employee Benefit Plan that is not a Company Employee Benefit Plan.

(viii) Except to the extent advance notice may be required by applicable Law, each Company Employee Benefit Plan (including without limitation each such plan covering retirees of the Company or an ERISA Affiliate or the beneficiaries of such retirees) may be terminated or amended by its sponsoring employer in any manner and at any time, without the consent of and without any further Liability to its participants or beneficiaries for benefits that may be accrued or expenses that may be incurred after the date of such termination or amendment.

(ix) No Company Employee Pension Plan is "top-heavy" as defined in Section 416 of the Code.

(x) No event has occurred and no condition exists with respect to any Company Employee Benefit Plan that could subject the Company, its Subsidiaries or Parent to any Tax or penalty under the Code or ERISA.

(xi) All contributions required to be made on or before the date of this Agreement with respect to any Company Employee Benefit Plan have been timely made, or are reflected on the most recent consolidated balance sheet (or the notes thereto) of the Company. All contributions required to be made with respect to any Company Employee Benefit Plan from and after the date of this Agreement and prior to the Closing Date will have been timely made, or will be reflected on the most recent balance sheet (or the notes thereto) of the Company.

(xii) There has been no amendment to, written interpretation of or announcement (whether or not written) by the Company or any ERISA Affiliate relating to, or change in employee participation or coverage under, any Company Employee Benefit Plan that would increase materially the expense of maintaining such Company Employee Benefit Plan above the level or expense incurred in respect thereof for the Company's most recent fiscal year ended prior to the date of this Agreement.

(xiii) Neither the Company nor any of its Subsidiaries has any prepaid or prefunded any Company Welfare Plan through a trust, reserve, premium stabilization or similar account, other than pursuant to an insurance contract which does not include a "fund" as defined in Sections 419(e)(3) and (4) of the Code; neither the Company nor any ERISA Affiliate has ever established or maintained a voluntary employees' beneficiary association, as defined in Section

501(c)(9) of the Code, whose members include or included current or former employees of the Company or an ERISA Affiliate.

Section 4.11 Material Contracts.

(a) Section 4.11(a) of the Company Disclosure Schedules lists (or provides a cross-reference to another Section of the Company Disclosure Schedules where such agreements are listed and references the specific subsection of this Section 4.11 to which such contracts and agreements are responsive) the following contracts and agreements (in each case, whether written or oral) that are currently binding and enforceable on the Company and the Operating Sub (collectively, the "Material Contracts"):

(i) any pension, profit sharing, stock option, employee stock purchase or other plan or arrangement providing for deferred or other compensation to employees or any other employee benefit plan, arrangement or practice, or severance agreements, programs, policies or arrangements, in each case whether formal or informal;

(ii) any collective bargaining agreement or any other contract with any labor union;

(iii) any management agreement, contract for the employment of any officer, individual, employee or other Person on a full time, part time, consulting or other basis providing annual cash or other compensation in excess of $50,000 or providing for the payment of any cash or other compensation or benefits upon the consummation of the transactions contemplated hereby;

(iv) any contract or agreement requiring the consent of any party thereto upon a change in control of the Company or any of its Subsidiaries, containing any provision which would result in a modification of any rights or obligations of any party thereunder upon a change in control of the Company or any of its Subsidiaries or which would provide any party any remedy (including rescission or liquidated damages) in the event of a change in control of the Company or any of its Subsidiaries;

(v) any contract under which it has advanced or loaned monies to any other Person or otherwise agreed to advance, loan or invest any funds;

(vi) any agreement or indenture relating to Indebtedness or the mortgaging, pledging or otherwise placing of an Encumbrance on any material asset or material group of assets of the Company and the Operating Sub or any letter of credit arrangements;

(vii) any guaranty of any obligation for Indebtedness or otherwise (other than endorsements made for collection in the ordinary course of business);

(viii) any Lease or agreement under which the Company or the Operating Sub is lessee of or holds or operates any property, real or personal, owned by any other Person, except for any lease of personal property under which the aggregate annual rental payments do not exceed $25,000;

(ix) any lease or agreement under which the Company or the Operating Sub is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by the Company or the Operating Sub;

(x) any nondisclosure or confidentiality agreements;

(xi) any contract or group of related contracts with the same party or group of affiliated parties for the purchase or sale of raw materials, commodities, supplies, products, equipment, its Intellectual Property Rights or its other personal property or for the receipt of services under which the undelivered balance of such products and services has a selling price in excess of $25,000;

(xii) any other contract or group of related contracts with the same party or group of affiliated parties continuing over a period of more than six (6) months from the date or dates thereof, not terminable by the Company or the Operating Sub upon 30 days' or less notice without penalty, involving more than $25,000 or requiring the payment of any fee, penalty or other amount by the Company or the Operating Sub in the event of any failure to perform or late performance by the Company or the Operating Sub;

(xiii) any contract relating to the marketing, sale, advertising or promotion of the Company's or the Operating Sub's products or services;

(xiv) any contract relating to the sale of the Company's or the Operating Sub's products or services to customers in excess of $120,000 per annum;

(xv) any warranty agreement with respect to products sold or leased or services provided, or indemnity agreement with any supplier under which it is obligated to indemnify such supplier against product liability claims;

(xvi) any agreements relating to the ownership of or investments in any business or enterprise, including investments in joint ventures and minority equity investments;

(xvii) any assignment, license, royalty, indemnification or other agreement with respect to any intangible property (including any of its Intellectual Property Rights);

(xviii) any contract for capital expenditures in excess of $25,000 in the aggregate;

(xix) any agreement under which it has granted any Person any registration rights (including demand or piggyback registration rights);

(xx) any broker, agent, sales representative, sales or distribution agreement or agreement relating to the export, import or transportation of any goods or equipment;

(xxi) any power of attorney or other similar agreement or grant of agency;

(xxii) any contract or agreement prohibiting it from freely engaging in any business or competing anywhere in the world; or

(xxiii) any other agreement which is material to its operations or business or involves annual consideration in excess of $25,000, whether or not in the ordinary course of business.

(b) Complete and correct copies of each of the agreements listed on Section 4.11(a) of the Company Disclosure Schedules (or cross-referenced therein), including all amendments, modifications and waivers thereto, have been provided to Parent.

(c) All of the Material Contracts are valid, binding and enforceable in accordance with their respective terms subject to the Bankruptcy Exception. Each of the Company and the Operating Sub has performed in all material respects all obligations required to be performed by it under the Material Contracts. Neither the Company nor the Operating Sub has been notified that it is in material default under or in material breach of, nor in receipt of any written claim of material default or material breach under, any Material Contract; no event has occurred which with the passage of time or the giving of notice or both would result in a material default, breach or event of noncompliance by the Company or the Operating Sub under any Material Contract; neither the Company nor the Operating Sub has any present expectation or intention of not fully performing all such obligations on a timely basis; and to the Knowledge of the Company, there is no material breach by the other parties to any Material Contract.

Section 4.12 Litigation. Section 4.12 of the Company Disclosure Schedules sets forth each Action or investigation or audit pending or, to the Knowledge of Company, threatened against Company or the Operating Sub (collectively, the "Pending Matters"). Except as set forth in Section 4.12 of the Company Disclosure Schedules, there is no Action or investigation or audit pending or, to the Knowledge of Company, threatened against Company or the Operating Sub that could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or interfere with Company's or the Operating Sub's ability to consummate the transactions contemplated hereby, and, to the Knowledge of Company, there are no existing facts or circumstances that could reasonably be expected to result in such a suit, claim, action, proceeding or investigation. Neither the Company nor the Operating Sub is aware of any facts or circumstances which could reasonably be expected to result in the denial of insurance coverage under policies issued to Company or the Operating Sub in respect of such Actions and investigations, except in any case as could not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Neither the Company nor the Operating Sub is subject to any outstanding order, judgment, writ, injunction, settlement or decree which could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or interfere with Company's or the Operating Sub's ability to consummate the transactions contemplated hereby. Neither the Company nor the Operating Sub is subject to any arbitration proceedings under collective bargaining agreements or otherwise or, to the Knowledge of the Company, any investigations or inquiries by any Governmental Entity. Except as disclosed in Section 4.12 of the Company Disclosure Schedules, neither the Company nor the Operating Sub is subject to any judgment, order or decree of any court or other Governmental Entity and neither the Company nor the Operating Sub has received any opinion or memorandum or legal advice from legal counsel to the effect that the Company or the

Operating Sub is exposed, from a legal standpoint, to any Liability which may be material to the Company's or the Operating Sub's business.

Section 4.13 Environmental Matters. The Company has delivered to Parent a true and complete copy of each of the environmental reports prepared by it or by third-party consultants and listed in Section 4.13 of the Company Disclosure Schedules (the "Environmental Reports"). Other than the Environmental Reports listed in Section 4.13 of the Company Disclosure Schedules, there are no environmental reports relating to the Company or its properties or assets. Except as could not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and the Operating Sub are in compliance with all applicable Environmental Laws and all Environmental Permits; (ii) all past noncompliance of the Company and the Operating Sub with Environmental Laws or Environmental Permits has been resolved without any pending, ongoing or future obligation, cost or Liability; (iii) neither the Company nor the Operating Sub has released a Hazardous Material at, or transported a Hazardous Material to or from, any real property currently or formerly owned, leased or occupied by the Company or the Operating Sub in amounts that violate, or would require remediation under, any Environmental Law; (iv) to the Knowledge of the Company, no other Person has released a Hazardous Material at, or transported a Hazardous Material to or from, any real property currently or formerly owned, leased or occupied by the Company or the Operating Sub in amounts that violate, or would require remediation under, any Environmental Law; (v) neither the Company nor the Operating Sub has received any notice, demand, suit or information request pursuant to Environmental Law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); (vi) none of the Company's or the Operating Sub's properties, former properties or any property to which the Company or the Operating Sub sent waste is listed on any regulatory list of contaminated properties, including but not limited to the National Priorities List promulgated pursuant to CERCLA, the Comprehensive Environmental Response, Compensation and Liability Information System or CERCLIS or any federal, state or local counterpart; (vii) no environmental approvals, clearances or consents are required under applicable Law from any Governmental Entity in order for the Parties to consummate the transactions contemplated herein or for the Surviving Corporation to continue the business of the Company or the Operating Sub after the Closing Date.

Section 4.14 Intellectual Property.

(a) Section 4.14(a) of the Company Disclosure Schedules contains a complete and correct list of each item of Intellectual Property owned, licensed or otherwise used by the Company or the Operating Sub that is material to the business of the Company or the Operating Sub as presently conducted ("Company Intellectual Property").

(b) The conduct of the business of the Company and the Operating Sub, as now or heretofore conducted, including, but not limited to the use, sale, offering for sale, making, distribution, importation, exportation, licensing or sublicensing of the services of the Company and the Operating Sub, does not and did not infringe upon or misappropriate any intellectual property right of any other Person, and none of the directors or officers of the Company or the Operating Sub has ever received any written charge, complaint, claim, demand or notice alleging any such infringement or misappropriation (including any claim that the

Company or the Operating Sub must license or refrain from using all or any portion of the Intellectual Property).

(c) To the Knowledge of the Company, there has been no unauthorized use, infringement or misappropriation of any Company Intellectual Property by any third party, including employees and former employees, consultants, customers or suppliers of the Company or the Operating Sub.

(d) The Company Intellectual Property consists solely of items and rights which are: (i) owned by the Company and the Operating Sub; (ii) in the public domain; or (iii) rightfully used by the Company and the Operating Sub.

(e) Section 4.14(e) of the Company Disclosure Schedules describes all patents, patent applications, trademark and service mark registrations, applications for trademark and service mark registrations, copyright registrations, and internet domain name registrations owned by the Company composing Intellectual Property ("Registered Intellectual Property") and maintenance and other payments or other actions falling due in respect of such Intellectual Property within six months following the Closing Date.

(f) All Registered Intellectual Property used in the business of the Company or the Operating Sub as now conducted, if any, are and remain valid, enforceable and subsisting, in good standing, with all fees, payments and filings due as of the Closing Date duly made. With respect to each item of Intellectual Property owned by the Company or the Operating Sub, (i) the item is not subject to any outstanding injunction, judgment, order, decree, ruling or charge that effects the legality, validity or enforceability of the item; and (ii) no Action is pending or, to the Company's Knowledge, is threatened that challenges the legality, validity or enforceability of the item.

(g) Except as set forth in Section 4.14(g) of the Company Disclosure Schedules, with respect to each item of Company Intellectual Property, (i) the Company and the Operating Sub possess all right, title and interest in and to the item, free and clear of any Encumbrance or other restriction; (ii) the item is not subject to any outstanding injunction, judgment, order, decree, ruling or charge affecting the Company's or the Operating Sub's use or ownership of the item; and (iii) no proceeding, investigation, charge, complaint, claim or demand is pending or, to the Knowledge of the Company, is threatened that challenges the Company's or the Operating Sub's use or ownership of the item.

(h) Section 4.14(h) of the Company Disclosure Schedules sets forth each material item of Intellectual Property licensed from or otherwise used by the Company and the Operating Sub by authority of third persons ("Licensed Intellectual Property").

(i) Each item of Intellectual Property owned or used by the Company and the Operating Sub immediately prior to the Closing will be owned or available for use by Parent on identical terms and conditions immediately after the Closing. The transactions contemplated by this Agreement will not result in (i) the infringement or misappropriation by the or the Company of any Intellectual Property right of any other Person, or (ii) a material default under any

agreements involving the grant to the Company or the Operating Sub of any rights in the Licensed Intellectual Property.

(j) All use by and disclosure to employees or others of all Company Intellectual Property with respect to which the Company and the Operating Sub have exclusivity and wishes to maintain confidentiality and that is not otherwise disclosed in published patents or patent applications or registered copyrights (collectively, the "Company Confidential Information") has been pursuant to the terms of valid and binding written confidentiality and nonuse/restricted-use agreements. Neither the Company nor the Operating Sub has disclosed or delivered to any third party, or permitted the disclosure or delivery to any escrow holder or other Person, any part of any source code.

(k) Except as set forth in Section 4.14(k) of the Company Disclosure Schedules, each current and former employee and contractor of the Company and the Operating Sub who is or was involved in, or who has contributed to, the creation or development of any Company Intellectual Property (other than third-party Intellectual Property licensed to Company and the Operating Sub) has executed and delivered and is in compliance with an enforceable agreement in substantially the form of Company's standard proprietary information and inventions agreements (which agreement provides valid written assignments of all title and rights to any Company Intellectual Property conceived or developed thereunder, or otherwise in connection with his or her consulting or employment).

Section 4.15 Taxes.

(a) Neither the Company nor the Operating Sub has any unpaid Liability for any Taxes in respect of any taxable period ending on or before the Closing Date, or any Taxes in respect of the portion of any Straddle Period which ends on the Closing Date, other than Taxes included in "Current Liabilities" on the Estimated Closing Balance Sheet or as described in Section 4.15 of the Company Disclosure Schedules. In the case of any Straddle Period, the Taxes of the Company (including the Taxes of the Operating Sub) shall be computed as if the actual taxable period ended on and included the Closing Date, except in the case of ad valorem real or personal property Taxes, if any, which shall be allocated to the portion of the Straddle Period ending on the Closing Date in accordance with the ratio of the number of days in such portion to the total number of days in the Straddle Period. As used in this Agreement, the term "Pre-Closing Tax Period" shall mean (i) any taxable period ending on or before the Closing Date or (ii) the portion of any Straddle Period which ends on the Closing Date.

(b) Each of the Company and the Operating Sub has filed all material Tax Returns required to have been filed prior to the Closing Date (subject to any timely extensions permitted by law) by it with the appropriate taxing authority with respect to Taxes for any period ending on or before the Closing Date, and all such Tax Returns are true, correct and complete. All Taxes shown to be payable by the Company and its Subsidiaries on such Tax Returns (or otherwise due and payable)have been paid prior to the Closing Date. The Company has delivered to Parent a true, complete and correct copy of the Company's Tax Return (including all Subsidiaries' Tax Returns) for each of the three years through December 31, 2004, each of which was timely filed by the Company (after receipt of appropriate extensions). Other than Taxes

incurred in the ordinary course of business since March 31, 2006, the Company does not have any Liability for Taxes through the Closing Date.

(c) With respect to the Pre-Closing Tax Period, such Tax period is not currently being reviewed by any relevant Taxing authority; (iv) no deficiency or proposed adjustment which has not been settled or otherwise resolved for any amount of Tax has been proposed, asserted or assessed by any Taxing authority against the Company or any of its Subsidiaries; (v) there is no Action, Taxing authority proceeding or audit now in progress, pending or, to the Company's Knowledge, threatened against or with respect to the Company or any of its Subsidiaries; (vi) to the Company's Knowledge, there is no basis for any Taxing authority to claim or assess any material amount of additional Taxes against the Company or any of its Subsidiaries; and (vii) no written claim has ever been made by a Taxing authority in a jurisdiction where the Company or any of its Subsidiaries has not filed a Tax Return that the Company or any of its Subsidiaries is or may be subject to Taxes assessed by such jurisdiction; (viii) neither the Company nor any of its Subsidiaries is liable for any amount of Taxes of another Person (A) under Treas. Reg. § 1.1502-6 (or comparable provisions of state, local or foreign Law), (B) as a transferee or successor, (C) by contract or indemnity or (D) in any other way.

(d) Except as set forth in Section 4.15 of the Company Disclosure Schedules, (i) no notice of audit or possible assessment has been received from any Taxing authority by the Company or any of its Subsidiaries, and (ii) neither the Company nor any of its Subsidiaries has agreed to any waiver or extension of the statute of limitations applicable to the assessment or collection of any Tax imposed in respect of a Pre-Closing Tax Period that has continuing effect, nor has any such waiver or extension been requested.

(e) Each of the Company and its Subsidiaries has withheld or otherwise collected all Taxes or other amounts it was required to withhold or collect under any applicable federal, state or local law, including, without limitation, any amounts required to be withheld or collected with respect to employee, state and federal income tax withholding, social security, unemployment compensation, sales or use taxes, workmen's compensation or other similar Taxes, and all such amounts have been timely remitted to the proper authorities.

(f) None of the assets of the Company or any of its Subsidiaries is subject to any Encumbrance for Taxes, except for Taxes not due and owing.

(g) Neither the Company nor any of its Subsidiaries is a party to or bound by any tax indemnity, tax sharing or other agreement, under which the Company or any of its Subsidiaries could become liable as a result of the imposition of a Tax upon any other Person or the assessment or collection of such a Tax.

(h) Neither the Company nor any of its Subsidiaries has agreed to make, and is not required to make, any adjustment under Section 481 of the Code (or any similar provision of state, local or foreign income tax law) by reason of a change in accounting methods or otherwise.

(i) The Company has provided adequate accruals in the Financial Statements and the Estimated Closing Balance Sheet for any Taxes that have not been paid (without taking into account any reserve for deferred Taxes). Since the date of the Financial Statements, neither the Company nor any Subsidiary has incurred any Taxes other than in the ordinary course of business.

(j) Neither the Company nor any Subsidiary has (i) been a party to, or a material advisor with respect to, any "reportable transaction" (within the meaning of Treas. Reg. § 1.6011-4 or any predecessor thereto), or (ii) been a party to a "tax shelter," within the meaning or Section 6662(d)(2)(c)(ii) of the Code.

Section 4.16 Insurance.

(a) Section 4.16 of the Company Disclosure Schedules contains a complete and correct list of all policies of insurance of any kind or nature covering the Company and any of its Subsidiaries including, without limitation, policies of life, fire, theft, professional services, employee fidelity, directors' and officers' and other casualty and liability insurance, and such policies are in full force and effect. Complete and correct copies of each such policy have been provided to Parent. Section 4.16 of the Company Disclosure Schedules also sets forth: (a) with respect to each such insurance policy, the applicable deductible amounts and any limitations to coverage; and (b) a true and complete list of material claims made in respect of such insurance policies from and after January 1, 2002. No notice of cancellation has been received with respect to any insurance policies relating to the Company or any of its Subsidiaries and no such policies are, to the Company's Knowledge, subject to any retroactive rate or audit adjustments or coinsurance arrangements. There is no claim by the Company or any of its Subsidiaries with respect to the ownership and operation of the business of the Company or any of its Subsidiaries pending under any of such insurance policies as to which coverage has been questioned, denied or disputed by the underwriters of such insurance policies or requirement by any insurer to perform work which has not been satisfied. Neither the Company nor any of its Subsidiaries has incurred any liability covered by the insurance policies for which it has not asserted a claim under such policies. All premiums due under all insurance policies have been paid. The insurance policies set forth on Section 4.16 of the Company Disclosure Schedules cover risks and liabilities to an extent and in a manner customary in the telecommunications industry.

(b) Except as set forth on Section 4.16(b) of the Company Disclosure Schedules, neither the Company nor the Operating Sub has any self-insurance or co-insurance programs, and the reserves set forth on the Balance Sheet are adequate to cover all of the Company's and the Operating Sub's anticipated liabilities with respect to any such self-insurance or co-insurance programs.

Section 4.17 Personal Property; Assets. Section 4.17 of the Company Disclosure Schedules lists (i) each item of personal property with a fair market value of $10,000 or more included (or that will be included) in "depreciable plant, property and equipment" (or similarly named line item) on the balance sheet of the Company as of the Balance Sheet Date and (ii) each item of personal property owned or leased by the Company or the Operating Sub with a value of $10,000 or more acquired since the Balance Sheet Date. True, complete and correct copies of each lease with respect to any item identified in Section 4.17 of the Company Disclosure

Schedules or listed on the Balance Sheet have been provided to Parent. Except as set forth in Section 4.17 of the Company Disclosure Schedules, (A) all such personal property is either owned by the Company or the Operating Sub or leased by the Company or the Operating Sub pursuant to a lease noted in Section 4.17 of the Company Disclosure Schedules or the Balance Sheet, (B) each of the items of personal property listed in Section 4.17 of the Company Disclosure Schedules or the Balance Sheet is in good working order and condition, ordinary wear and tear excepted, and (C) all leases and agreements noted in Section 4.17 of the Company Disclosure Schedules or the Balance Sheet are in full force and effect. Each of the Company and the Operating Sub has good and marketable title to all of its respective personal property shown as owned on the Balance Sheet or acquired thereafter (except for assets disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date or as set forth in Section 4.17 of the Company Disclosure Schedules), free and clear of any Encumbrances, except for Permitted Encumbrances. The assets owned or leased by the Company and the Operating Sub constitutes all of the property and assets, tangible and intangible, necessary in the conduct and operation of the business of the Company or the Operating Sub as currently conducted.

Section 4.18 Transactions with Affiliates. Except as set forth in Section 4.18 of the Company Disclosure Schedules, neither the Company nor the Operating Sub is a party to any contract, agreement, transaction or other arrangement with (a) any current or former officer, director or stockholder; (b) any parent, spouse, child, brother, sister or other family relation (by blood or marriage) of any such officer, director or stockholder; (c) any corporation, partnership or other entity of which any such officer, director or stockholder or any such family relation is an officer, director, partner, trustee or greater than 10% equity owner or beneficiary; or (d) any Affiliate of the Company.

Section 4.19 Compensation; Employment Agreements. Section 4.19 of the Company Disclosure Schedules sets forth a true, complete and correct list of all officers, directors, salaried employees, hourly employees by category, independent contractors and consultants of or to the Company and any of its Subsidiaries setting forth each such Person's title and summarizing the current annual rate of compensation of each such Person (separately identifying any non-discretionary bonus arrangement or compensation arrangement with any such Person). The Company has provided to Parent true, complete and correct copies of all employment or service agreements and bonus or other compensation plans to which the Company or any of its Subsidiaries is a party. Except as set forth in Section 4.19 of the Company Disclosure Schedules, since the Balance Sheet Date, there have been no increases in the compensation payable or any special bonuses to any officer, director, key employee or other employee, independent contractor or consultant of the Company or any of its Subsidiaries, other than in the ordinary course of business to Persons not subject to an employment agreement with the Company or any of its Subsidiaries. Except as set forth in Section 4.19 of the Company Disclosure Schedules, neither the Company nor any of its Subsidiaries has any obligation to make severance, bonus or other payments to any such Person, whether as a result of the transactions contemplated hereby or otherwise. Except as set forth in Section 4.19 of the Company Disclosure Schedules or as otherwise provided in this Agreement, no such Person has given notice that they will terminate their employment or services with or to the Company or any of its Subsidiaries. Section 4.19 of the Company Disclosure Schedules accurately reflects the amount of all Liabilities of the Company for the Employee Obligations.

Section 4.20 Collective Bargaining Agreements and Labor.

(a) Neither the Company nor the Operating Sub is a party to any labor, collective bargaining or similar agreement, and there are no labor, collective bargaining or similar agreements covering any of the Company's or the Operating Sub's employees. There are no pending strikes, work stoppages, slowdowns, lockouts, material arbitrations or other labor disputes pending, or to the Knowledge of the Company threatened, against the Company or the Operating Sub.

(b) Each of the Company and the Operating Sub are in material compliance with all laws, regulations and orders of any Governmental Entity relating to its employees, including all those relating to wages, hours, WARN, collective bargaining, discrimination, civil rights, safety and health, immigration, workers' compensation and the collection and payment of withholding and/or social security taxes and any similar Tax obligation.

(c) The Company has classified all individuals who perform services for it and any of its Subsidiaries correctly under each Company Employee Benefit Plan, ERISA, the Code and other applicable law as common law employees, independent contractors or leased employees, and there is no Action pending, or to the Knowledge of the Company threatened, that challenges such classification.

Section 4.21 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger based upon arrangements made by or on behalf of the Company.

Section 4.22 Certain Business Practices. Neither the Company, the Operating Sub or any of their respective directors, officers, employees or agents has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment in violation of any federal, state, local, municipal, foreign or other law, ordinance, regulation, statute or treaty to any person or entity, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, or (iii) to obtain special concessions or for special concessions already obtained, for or in respect of the Company or any Affiliate thereof, or (b) established or maintained any fund or asset of the Company or the Operating Sub that has not been recorded in the books and records of the Company or the Operating Sub.

Section 4.23 Business Activity Restriction. There is no non-competition or other similar agreement, commitment or Governmental Order to which the Company or the Operating Sub is a party or subject to that has or could reasonably be expected to have the effect of prohibiting or impairing the conduct of business by the Company or the Operating Sub) in any material respect. Neither the Company nor the Operating Sub has entered into any agreement under which the Company or the Operating Sub is restricted from selling, licensing or otherwise distributing any of its technology or products to, or providing services to, customers or potential customers or any class of customers, in any geographic area, during any period of time or in any segment of the market or line of business. The Company and Operating Sub are in compliance with all material terms of any agreement set forth in Section 4.23 of the Company Disclosure Schedules and there is no default in any material respect beyond any applicable notice or grace

period nor has the Company or the Operating Sub received written notice of any such default still outstanding under any such agreement.

Section 4.24 Real Property.

(a) Neither the Company nor the Operating Sub owns any interest in real property.

(b) Section 4.24 of the Company Disclosure Schedules contains a true, complete and correct list of all leases, subleases, license agreements or other rights of possession or occupancy of real property to which the Company or the Operating Sub is a party (each, a "Lease"). All of the Leases are in full force and effect, and neither the Company nor the Operating Sub is in default in any material respect beyond any applicable notice or grace period and has not received written notice of any such default still outstanding on the date hereof under any such Lease. To the Knowledge of the Company, on the date hereof, there exists no uncured material default thereunder by any third party. True, complete and correct copies of each Lease have been furnished to Parent. Except as described in Section 4.24 of the Company Disclosure Schedules, no consent is required of any landlord or any other party to any Lease to consummate the transactions contemplated hereby. Except as set forth in Section 4.24 of the Company Disclosure Schedules, neither the Company nor the Operating Sub has agreed or is otherwise committed to lease any real property except for the real property described in the Leases.

(c) No Action is pending or, to the Knowledge of the Company, threatened for the taking or condemnation of all or any portion of the property demised under the Leases. There is no unpaid brokerage commission, finder's fee or a similar payment due from the Company or the Operating Sub with regard to any of the Leases.

(d) Except as set forth in Section 4.24 of the Company Disclosure Schedules, the real property demised under the Leases is (i) adequate and sufficient for the current operation of the business of the Company or the Operating Sub, (ii) in good working order, repair and operating condition (ordinary wear and tear excepted), and (iii) adequately serviced by all services and utilities necessary for the current operation of the business of the Company or the Operating Sub.

Section 4.25 Bank Accounts. Section 4.25 of the Company Disclosure Schedules sets forth a true, complete and correct list of all bank accounts, safe deposit boxes and lock boxes of the Company and the Operating Sub, including, with respect to each such account and lock box (a) identification of all authorized signatories, (b) identification of the purpose of such account or lock box, including identification of any accounts or lock boxes representing escrow funds or otherwise subject to restriction and (c) identification of the amount on deposit as of the date hereof.

Section 4.26 Privacy. The Company is, and has always been, in material compliance with its then-current privacy policy, including those posted on the Company's Web site(s). The Company has conducted its business and maintained its data at all times in accordance with all applicable Federal, state and other Laws, including, but not limited to, those relating to the use of

information collected from or about consumers. The Company is, and has always been, in compliance with its customers' privacy policies, when required to do so by contract.

Section 4.27 Product Claims. Except as described in Section 4.27 of the Company Disclosure Schedules: (a) each product sold, leased or delivered, or service provided, by the Company and the Operating Sub has conformed in all material respects with all applicable contractual commitments and all express and implied warranties, and (b) neither the Company nor the Operating Sub has any material Liability (and there is no pending or, to the Company's Knowledge, threatened claim against it that would reasonably be expected to give rise to any material Liability) for replacement or repair thereof or other damages in connection therewith. No product sold, leased or delivered, or service provided, by the Company or the Operating Sub is subject to any guaranty, warranty or other indemnity beyond the Company's applicable standard terms and conditions of sale or lease or as may be imposed by applicable Law.

Section 4.28 Disclosure. No representation or warranty by the Company in this Agreement and no statement contained in any document or other writing furnished or to be furnished to Parent or Merger Sub or their respective representatives pursuant to the provisions hereof contains or will contain any untrue statement of material fact or omits or will omit to state any material fact necessary in order to make the statements made herein or therein not misleading.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub represent and warrant to the Company that each of the following representations and warranties set forth in this Article V are, as of the date hereof, and will be (unless made as of a specified date), as of the Closing Date, true and correct:

Section 5.1 Organization and Qualification; Subsidiaries. Parent and Merger Sub have each been duly organized and each is validly existing and in good standing (to the extent applicable) under the Laws of the jurisdiction of its incorporation or organization as the case may be, and has the requisite corporate power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as it is now being conducted. Each of Parent and Merger Sub is duly qualified or licensed to do business, and is in good standing (to the extent applicable), in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing that could not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.2 Certificate of Incorporation and Bylaws. The copies of each of Parent's and Merger Subs' certificate of incorporation and bylaws previously provided to Company by Parent are true, complete and correct copies thereof. Such certificates of incorporation and bylaws are in full force and effect.

Section 5.3 Execution and Effect of Agreement. Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement and the other

Ancillary Documents to which each is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Documents to which each is a party by each of Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize this Agreement and the Ancillary Documents to which each is a party or to consummate such transactions contemplated hereby and thereby (other than the consent of Parent as sole stockholder of Merger Sub and the filing and recordation of the Certificate of Merger as required by Delaware Law). This Agreement and the Ancillary Documents to which each is a party have been or will be duly executed and delivered by each of Parent and Merger Sub and, assuming the due authorization, execution and delivery by Company, each such agreement constitutes or will constitute a legal, valid and binding obligation of each of Parent and Merger Sub enforceable against Parent and Merger Sub in accordance with its terms, subject to the Bankruptcy Exception.

Section 5.4 No Conflict; Required Filings and Consents.

(a) The execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance by Parent and Merger Sub of their obligations hereunder and the consummation of the Merger will not, (i) conflict with or violate any provision of the certificate of incorporation or bylaws of Parent or any equivalent organizational documents of any Subsidiary of Parent, (ii) assuming that all consents, approvals, authorizations and permits described in Section 5.4(b) have been obtained and all filings and notifications described in Section 5.4(b) have been made, conflict with or violate any Law applicable to Parent or any other Subsidiary of Parent or by which any property or asset of Parent or any Subsidiary of Parent is bound or affected or (iii) result in any material breach of or constitute a material default (or an event which with the giving of notice or lapse of time or both could reasonably be expected to become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a Encumbrance on any material property or asset of Parent or any Subsidiary of Parent pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation.

(b) The execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance by Parent and Merger Sub of their obligations hereunder and the consummation of the Merger will not, require any consent, approval, authorization or permit of, or filing by Parent with or notification by Parent to, any Governmental Entity, except pursuant to applicable requirements of the Exchange Act, the Securities Act, Blue Sky Laws, state takeover laws, and the filing and recordation of the Certificate of Merger as required by Delaware Law.

Section 5.5 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger based upon arrangements made by or on behalf of Parent.

Section 5.6 Investment Intention. The Parent is acquiring through the Merger the Shares for its own account, for investment purposes only, and not with a view to the distribution (as such term is used in Section 2(11) of the Securities Act). The Parent understands that the

Shares have not been registered under the Securities Act and cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is available.

Section 5.7 Financing. The Parent and the Merger Sub have and, as of the Closing, will have, sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Merger Consideration.

Section 5.8 Litigation. As of the date of this Agreement, there are no legal proceedings pending or, to the Knowledge of the Parent or the Merger Sub, threatened that are reasonably likely to prohibit or restrain the ability of the Parent or the Merger Sub to enter into this Agreement or consummate the transactions contemplated hereby.

Section 5.9 Disclosure. No representation or warranty by the Parent or the Merger Sub in this Agreement and no statement contained in any document or other writing furnished or to be furnished to the Company or its representatives pursuant to the provisions hereof contains or will contain any untrue statement of material fact or omits or will omit to state any material fact necessary in order to make the statements made herein or therein not misleading.

ARTICLE VI
PRE - CLOSING COVENANTS

Section 6.1 Conduct of Business by Company Pending the Closing. The Company agrees that, between the date of this Agreement and the Effective Time, except as contemplated by this Agreement, unless Parent shall otherwise agree in writing, (x) the business of the Company and the Operating Sub shall be conducted only in, and the Company shall not take any action except in, the ordinary course of business consistent with past practice and (y) the Company shall use commercially reasonable efforts to keep available the services of the current officers, significant employees and consultants of the Company and to preserve the current relationships of the Company with the corporate partners, customers, suppliers and other persons with which the Company has significant business relations in order to preserve substantially intact its business organization. Whether or not in the ordinary course of business, the Company shall not, and shall cause the Operating Sub not to, between the date of this Agreement and the Effective Time, except as contemplated by this Agreement, directly or indirectly, do, or agree to do, any of the following without the prior written consent of Parent:

(a) amend or otherwise change any of the Organizational Documents;

(b) except as expressly set forth on Schedule 6.1(b), issue, sell, pledge, dispose of, grant, transfer, lease, license, guarantee or encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer, lease, license or encumbrance of, (i) any Company Options or other securities, options, warrants or other rights convertible into or exchangeable or exercisable for any shares of the Company's capital stock or any other ownership interest (including, without limitation, any phantom interest), of the Company or the Operating Sub not issued or outstanding as of the date of this Agreement or (ii) any material property or assets of the Company or the Operating Sub except (x) sales of inventory in the ordinary course of business consistent with past practice and (y) as required by Section 6.11 of this Agreement;

(c) (i) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) any interest in any corporation, partnership, other business organization or Person or any division thereof; (ii) incur any Indebtedness or other Liability for borrowed money (other than in *de minimus* amounts) or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person for Indebtedness or make any loans or advances material to the business, assets, liabilities, financial condition or results of operations of the Company or the Operating Sub other than, with respect to each of the foregoing, in an amount not to exceed $100,000; (iii) terminate, cancel or request any material change in, or agree to any material change in, any Material Contract or Company Permit; (iv) make or authorize any capital expenditure, other than capital expenditures in the ordinary course of business consistent with past practice that have been described in the Company Disclosure Schedules and that are not, in the aggregate, in excess of $50,000 monthly for Company or the Operating Sub; or (v) enter into or amend any contract, agreement, commitment or arrangement that, if fully performed, would not be permitted under this Section 6.1(c);

(d) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock, except for the dividend to the Company to the Company's stockholders of the shares of capital stock of any Excluded Subsidiary that is planned to be effected on or before the Closing Date;

(e) reclassify, combine, split, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock except repurchases of unvested shares at cost in connection with the termination of the employment relationship with any employee pursuant to stock option or purchase agreements in effect on the date hereof;

(f) amend the terms of, repurchase, redeem or otherwise acquire any of its securities or propose to do any of the foregoing;

(g) increase the compensation payable or to become payable to its directors, officers, or consultants other than increases in employee compensation in the ordinary course of business and consistent with past practice; grant any rights to severance or termination pay (other than consistent with past practice) to, or enter into any employment or severance agreement which provides benefits upon a change in control of the Company that would be triggered by the Merger with, any director, officer, consultant or other employee of the Company or the Operating Sub who is not currently entitled to such benefits from the Merger, establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer, consultant or employee of the Company or the Operating Sub, except to the extent required by applicable Law or the terms of a collective bargaining agreement, or enter into or amend any contract, agreement, commitment or arrangement between the Company, the Operating Sub and any of their respective directors, officers, consultants or employees;

(h) pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or

satisfaction in the ordinary course of business and consistent with past practice of liabilities reflected or reserved against on the Balance Sheet;

(i) except as required by any Governmental Entity, make any change with respect to Company's accounting policies, principles, methods or procedures, including, without limitation, revenue recognition policies, other than as required by GAAP;

(j) make any Tax election or settle or compromise any Tax liability other than Taxes that are payable in the ordinary course of business;

(k) enter into any transactions set forth in Section 4.9; or

(l) authorize or enter into any formal or informal agreement or otherwise make any commitment to do any of the foregoing or to take any action which would make any of the representations or warranties of Company contained in this Agreement untrue or incorrect or prevent Company from performing or cause Company not to perform its covenants hereunder in any material respect or result in any of the conditions to the Merger set forth herein not being satisfied or prevent Company from performing or cause Company not to perform its covenants hereunder.

Section 6.2 Notices of Certain Events. Each of the Parent and the Company shall give prompt notice to the other of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Merger; (ii) any notice or other communication from any Governmental Entity in connection with the Merger; (iii) any Actions or investigations commenced or, to the Knowledge of the Company or the Parent (as applicable), threatened against, relating to or involving or otherwise affecting the Parent or the Company, respectively, or that relate to the consummation of the Merger; (iv) the occurrence of a default or event that, with the giving of notice or lapse of time or both, will become a default under, with respect to the Company, any Material Contract or, with respect to the Parent, any contract or agreement material to the Parent's business as currently conducted; and (v) any change that could reasonably be expected to have a Parent Material Adverse Effect or a Company Material Adverse Effect, respectively, or to delay or impede the ability of either the Parent or the Company, respectively, to perform their respective obligations pursuant to this Agreement and to effect the consummation of the Merger.

Section 6.3 Access to Information; Confidentiality.

(a) Prior to the Closing Date, each Party shall hold in strict confidence, and shall use its commercially reasonable efforts to cause all of its officers, directors, employees, accountants, consultants, legal counsel, agents and other representatives (collectively, "Representatives") to hold in strict confidence, unless compelled to disclose by judicial or administrative process, or by other requirements of Law, all confidential information concerning the other Party which it has obtained from the other Party or its Representatives in connection with the Merger and this Agreement, and the receiving Party shall not use or disclose to others, or permit the use of or disclosure of, any such information so obtained, and will not release or disclose such information to any other Person, except its Representatives who need to know such information in connection with this Agreement (and who shall be advised of the provisions of

this Section 6.3(a)). The foregoing provision shall not apply to any such information to the extent: (i) known by the receiving Party prior to the date such information was provided to that Party by the other Party or its Representatives in connection with the Merger; (ii) made known to the receiving Party from a third party not in breach of any confidentiality requirement; or (iii) made public through no fault of the disclosing Party or any of its Representatives.

(b) Subject to Section 6.3(a) and except as required pursuant to any confidentiality agreement or similar agreement or arrangement to which the Parent or the Company is a party (the "Confidentiality Agreement") or pursuant to applicable Law or the regulations or requirements of any stock exchange or other regulatory organization with whose rules a party hereto is required to comply, from the date of this Agreement to the Effective Time, the Parent and the Company shall (i) provide to the other Party and its Representatives access at reasonable times upon prior notice to its officers, employees, agents, properties, offices and other facilities and to the books and records thereof, and (ii) furnish promptly such information concerning its business, properties, contracts, assets, Liabilities and personnel as the other Party or its Representatives may reasonably request. No investigation conducted pursuant to this Section 6.3 shall affect or be deemed to modify any representation or warranty made in this Agreement.

(c) The Parties shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Confidentiality Agreement with respect to the information disclosed pursuant to this Section 6.3.

Section 6.4 No Shop.

(a) In consideration of the substantial expenditure of time, effort and expense undertaken by the Parent in connection with its due diligence efforts and the preparation, negotiation and execution of this Agreement, the Company and the Stockholders agree that neither they nor their respective Representatives shall, after the execution of this Agreement until the Closing Date or the earlier termination of this Agreement (the "No-Shop Period"), directly or indirectly: (i) solicit, initiate, encourage or take an action intended to encourage, enter into, conduct, engage in or continue any discussions, or enter into any agreement or understanding, with any other Person (other than any officer, director, controlled affiliate or employee of the Stockholder or any of their respective Affiliates or any investment banker, attorney or other advisor or representative of the Stockholder or any of its Affiliates) regarding an Acquisition Proposal; or (ii) disclose any nonpublic information relating to the Company or afford access to the properties, books or records of the Company with respect to the ownership and operation of the Company's business to any other Person that may be considering an Acquisition Proposal or has acquired, an interest in the Company. For purposes of this Agreement, "Acquisition Proposal" means the transfer, directly or indirectly, of any capital stock of or any other interest in the Company, its Subsidiaries or any of their respective assets (including by way of a license or merger).

(b) The Company hereby confirms to Parent that, as of the date hereof, all discussions, negotiations and other activities with any other Person by or on behalf of the Company have been terminated and that neither the Company nor the Stockholders have any

obligation to sell to or discuss with any other Person the sale of capital stock or assets of the Company or any of its Subsidiaries.

Section 6.5 Control of Operations. Nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the operations of the Company or the Subsidiaries prior to the Effective Time. Prior to the Effective Time, Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations and the operations of its Subsidiaries.

Section 6.6 Further Action; Consents; Filings.

(a) Upon the terms and subject to the conditions hereof, each of the Parties shall use all reasonable efforts to (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the Merger, (ii) obtain from Governmental Entities any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by the Parent or the Company in connection with the authorization, execution and delivery of this Agreement and the consummation of the Merger and (iii) make all necessary filings, and thereafter make any other required or appropriate submissions, with respect to this Agreement and the Merger required under (A) the Securities Act, the Exchange Act and any other applicable Federal or state securities Laws, and (B) any other applicable Law. The Parties shall cooperate and consult with each other in connection with the making of all such filings, including by providing copies of all such documents to the nonfiling Parties and their advisors prior to filing, and none of the Parties shall file any such document if any of the other Parties shall have reasonably objected to the filing of such document. Except as otherwise provided in this Agreement, no Party shall consent to any voluntary extension of any statutory deadline or waiting period or to any voluntary delay of the consummation of the Merger at the behest of any Governmental Entity without the consent and agreement of the other Parties hereto, which consent shall not be unreasonably withheld or delayed.

(b) As promptly as practicable after the execution and delivery of this Agreement and in no event later than 30 days following the date of this Agreement, the Parent and the Company shall prepare and file, or cause to be prepared and filed, the necessary application or applications with the FCC seeking any FCC Consent and with the States seeking any State PUC Consents required by any applicable Laws. Each Party shall provide the other Party with all information necessary for the preparation of such applications on a timely basis, including those portions of such applications which are required to be completed by the first Party. Each Party shall use its commercially reasonable efforts to refrain from Knowingly taking any action that would cause the FCC or any State PUC or other Governmental Entity not to grant the FCC consent or any State PUC Consents. If any administrative or judicial Action is instituted (or threatened to be instituted), including by a private party, to prohibit the Merger, the Company and Parent shall use their reasonable best efforts to avoid the institution of any such Action and to contest and resist any such Action and to have vacated, lifted, reversed or overturned any temporary, preliminary or permanent decree, judgment, injunction or other order that is in effect and that prohibits, prevents, delays or restricts consummation of the Merger (it being understood that the foregoing obligation of the Parties will cease in the event a permanent

decree, judgment, injunction or other order is issued or is in effect that is non-appealable and prohibits, prevents, delays or restricts consummation of the Merger).

(c) Each of the Company and the Parent will give any notices to third persons, and use, and cause their respective Subsidiaries to use, reasonable efforts to obtain any consents from third Persons necessary, proper or advisable (as determined in good faith by the Parent with respect to such notices or consents to be delivered or obtained by Company) to consummate the transactions contemplated by this Agreement.

(d) The Parties shall cooperate in good faith and consult with each other in order to facilitate the retention and employment of Persons listed on Exhibit J hereto with the Surviving Corporation, Parent or Eschelon following the Closing. Neither the Company nor the Operating Sub will take any measures to discourage the Persons listed on Exhibit J from accepting employment from Eschelon or the Parent or remaining as employees of the Surviving Corporation; provided, however, that, in the absence of bad faith, neither the Company nor the Stockholders shall be liable in the event that any Person listed on Exhibit J does not accept employment with Eschelon or the Parent or remain as an employee of the Surviving Corporation immediately following the Closing.

Section 6.7 Tax Information. The Company shall provide the Parent and its Representatives reasonable access, during normal business hours during the period prior to the Effective Time, to all of Company's Tax Returns and other records and workpapers relating to Taxes.

Section 6.8 Termination of 401(k) Plan; 280(G) Matters.

(a) Each of the Company and the Parent will give any notices to third persons, and use, and cause their respective Subsidiaries to use, reasonable efforts to obtain any consents from third Persons necessary, proper or advisable unless the Parent consents otherwise in writing, the Company (including the Company Board of Directors) shall take all action necessary to terminate, or cause to terminate, before the Effective Time, any Company Benefit Plan that is a 401(k) plan or other defined contribution retirement plan (the "Company 401(k) Plan"). The Parent and the Company shall take all action necessary to permit the Company employees to elect direct rollovers of their account balances in the Company's terminated 401(k) plan or other defined contribution plan (including outstanding participant loans, if any) to a qualified relevant plan of Parent or its Subsidiaries.

(b) The Company shall promptly submit to the stockholders of the Company for approval (in a manner satisfactory to the Parent), by such number of stockholders of the Company as is required by the terms of Section 280G(b)(5)(B) of the Code, any payments and/or benefits that may separately or in the aggregate, constitute "parachute payments" pursuant to Section 280G of the Code ("Section 280G Payments") (which determination shall be made by the Company and shall be subject to review and approval by the Parent), such that such payments and benefits shall not be deemed to be Section 280G Payments, and prior to the Effective Time the Company shall deliver to the Parent evidence satisfactory to the Parent that (i) a vote of the stockholders of the Company was solicited in conformance with Section 280G and the regulations promulgated thereunder and the requisite stockholder approval was obtained

with respect to any payments and/or benefits that were subject to the stockholder vote (the "280G Stockholder Approval"), or (ii) that the 280G Stockholder Approval was not obtained and as a consequence, that such payments and/or benefits shall not be made or provided to the extent they would cause any amounts to constitute Section 280G Payments, pursuant to the waivers of those payments and/or benefits, which were executed by the affected individuals prior to the stockholder vote.

Section 6.9 Announcements. Except as otherwise set forth in the next sentence of this Section 6.9, from and after the date of this Agreement until the Effective Time, each Party agrees not to make any public announcement or other disclosure concerning this Agreement or the transactions contemplated herein without obtaining the prior written consent of the Parent and the Company as to form, content and timing except to the extent required by applicable Law, in which case the issuing Party shall use all reasonable efforts to consult with the other Party before issuing any such release or making any such public statement.

Section 6.10 Satisfaction of Employee Obligations. On or prior to the Closing, the Company and the Stockholders shall pay and fully satisfy any outstanding Liabilities of the Company for Employee Obligations such that immediately following the Closing, neither the Parent or the Surviving Corporation shall have any Liability for such obligations.

Section 6.11 Transfer of Excluded Subsidiaries. Prior to the Closing, the Company shall take all steps necessary to effect a sale, disposition or other transaction so that the effect of such transaction is that the Operating Sub will be the only Subsidiary of the Company at the Effective Time (collectively, the "Excluded Subsidiaries Transaction"). The Company shall provide evidence reasonably satisfactory to the Parent that title to all outstanding capital stock of the Excluded Subsidiaries has vested in a party other than the Company or Operating Sub.

Section 6.12 Execution of Stockholder Closing Documents. On or prior to the Closing, (i) the Key Employees shall have executed and delivered the Key Employee Agreements; (ii) the Non-Stockholder Employees shall have executed and delivered the Stockholder Letters of Transmittal; and (iii) SRPMIC shall have executed and delivered the SRPMIC Stockholder Letter, each in the respective forms attached hereto, and such Stockholder Closing Documents shall be in full force and effect as of the Closing.

Section 6.13 Stockholder Approval. The Company shall call and hold the Company stockholders' meeting or solicit the written consent of its stockholders for the purpose of voting upon the approval of this Agreement and the Merger, and the Company shall use all reasonable efforts to hold the Company stockholders' meeting or obtain such written consent as soon as practicable after the date hereof. The Company shall use all reasonable efforts to solicit from its stockholders proxies (or written consents) in favor of the approval of this Agreement and the Merger and shall take all other commercially reasonable action necessary or advisable to secure the vote or consent of stockholders required by Delaware Law to obtain such approval. The Company shall take all other action reasonably necessary or advisable to promptly and expeditiously secure any vote or consent of stockholders required by applicable Law and the Company Charter and Company Bylaws to effect the Merger.

Section 6.14 Encumbrances. The Company shall take all actions reasonably necessary such that all Encumbrances (other than Permitted Encumbrances) on assets of the Company and/or the Operating Sub shall be released prior to or simultaneously with the Closing; provided, however, that if the Company or Operating Sub has no further Liability for the repayment of Indebtedness and only UCC Termination Statements are required to be filed in order to fully release and terminate any Encumbrance that was securing such Indebtedness, then this condition shall be deemed satisfied and the Parties shall cooperate following the Closing in the manner set forth in Section 7.1(b) to file such UCC Termination Statements.

Section 6.15 Execution of Transition Services Agreement. On or prior to the Closing, Parent and Electric IP shall have entered into a transition services agreement in a form reasonably acceptable to the Parent which shall provide for, among other things, services to be performed by employees of Electric IP for a period of up to one year following the Closing (the "Transition Services Agreement").

Section 6.16 Assignment of Sales Agreement. On or prior to the Closing, the Company and Operating Sub shall have terminated the sales agreement by and between the Operating Sub and Shawn A. Vasicek (the "Sales Agreement") pursuant to a signed instrument in a form satisfactory to Parent (the "Termination of Sales Agreement") and neither Parent nor Operating Sub shall have any continuing obligations under such Sales Agreement.

Section 6.17 Scottsdale Switch Amendment. On or prior to the Closing, Eschelon or the Parent, on the one hand, and the Company and SRPMIC, on the other hand, shall have entered into the Scottsdale Switch Amendment. As of the Closing, the Existing Scottsdale Switch Agreements shall be in full force and effect and no party thereto shall have notified any other party that they will not continue to fulfill the terms and conditions under such agreements.

(a) Supplements to Disclosure Schedules. It is understood and agreed that the Company, on the one hand, and Parent and Merger Sub, on the other hand, have a continuing obligation until the Closing Date to amend or supplement promptly the Company Disclosure Schedules attached to this Agreement, respectively, with respect to any and all matters hereafter arising or discovered which, if existing or known as of the date of this Agreement, would have been required to be set forth or described in such schedules or that is necessary to complete or correct any information in any representation or warranty of the Company, the Parent or Merger Sub contained in this Agreement. The disclosure provided by the Company, the Parent or the Merger Sub, as applicable, in any such amended, supplemented or revised schedule shall in no way affect or be deemed to limit the Company's or the Parent's right and option, exercisable at any time prior to the Closing, to provide written notice to the Company or the Parent, as applicable, that such Party has elected to terminate this Agreement and the Merger if, in the exercise of such terminating Party's reasonable good faith judgment, items added to the schedules that were not included in the schedules in the form attached to this Agreement at the time of execution, disclose that matters exist which could reasonably be expected to have a Company Material Adverse Effect or Parent Material Adverse Effect, as applicable, or could otherwise materially affect the ability of the Parties to consummate the transactions contemplated hereby; *provided* that, after the Closing, none of Parent, the Company or the Stockholders shall be entitled to allege a breach of this Agreement or the Ancillary Documents for matters fully and accurately disclosed prior to Closing or seek indemnification with respect to such matters. If the

Parent or the Company, as applicable, does not elect to terminate this Agreement as provided above, this Agreement shall remain in full force and effect subject to the express provisions hereof. Notwithstanding the foregoing, on or prior to the Closing, the Company shall provide updated Company Disclosure Schedules that identify which subsections of Section 4.11 of the Company Disclosure Schedules the contracts disclosed therein are responsive.

ARTICLE VII
POST - CLOSING AGREEMENTS

Section 7.1 Cooperation.

(a) If, at any time after the Closing, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, the Stockholders agree to take, and will take, all such lawful and necessary action required to so do, so long as such action is not inconsistent with this Agreement. In furtherance thereof, each Party agrees to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be necessary or convenient, in the opinion of the other Parties' counsel, to carry out the transactions contemplated hereby. The Stockholders will cooperate and use their commercially reasonable efforts to have the current officers, directors and employees of the Company cooperate with Parent and the Surviving Corporation on and after the Closing Date in furnishing information and other assistance in connection with any Tax Return filing obligations pertaining to all periods prior to the Closing Date.

(b) After the Closing, the Stockholders shall cooperate with Parent and shall take all actions reasonably necessary such that Parent can file UCC-2 or UCC-3 termination statements, as applicable (collectively, the "UCC Termination Statements"), with respect to each of the unexpired UCC-1 financing statements filed in order to perfect security interests in assets of the Company and/or the Operating Sub.

(c) Neither the Parent nor the Company shall, at any time prior to 90 days after the Closing Date, effectuate a "plant closing" or "mass layoff", as those terms are defined in WARN, affecting in whole or in part any site of employment, facility, operating unit or employee, except in compliance with WARN. The Company shall notify Parent prior to the Closing of any layoffs that have occurred in the 90-day period prior to the Closing Date.

Section 7.2 Employee Benefit Matters. For all purposes (including, without limitation, eligibility, vesting, and benefit accrual) under the employee benefit plans of the Parent and its Subsidiaries providing benefits to former employees of the Company and the Subsidiaries after the Effective Time, each such employee shall be credited with his or her years of service with the Company and such Subsidiary, as applicable, before the Effective Time, to the same extent as such employee was entitled, before the Effective Time, to credit for such service under any similar Company Benefit Plan, except for purposes of benefit accrual under defined benefit

pension plans, if any. Following the Effective Time, the Parent shall, or shall cause its Subsidiaries to, waive any pre-existing condition limitation under any welfare benefit plan maintained by the Parent or any of its Subsidiaries in which such employees and their eligible dependents participate (except to the extent that such pre-existing condition limitation would have been applicable under the comparable Company Welfare Plans immediately prior to the Effective Time).

Section 7.3 Indemnification of Directors and Officers: D&O Policy. Parent agrees that subsequent to the Effective Time it will provide to the individuals who were directors and officers of the Company immediately prior to the Effective Time indemnification in accordance with the current provisions of the Organizational Documents of the Company with respect to matters occurring prior to the Effective Time and the Merger and the other transactions contemplated by this Agreement, for a period of six (6) years from the Effective Time (or, in the case of matters occurring prior to the Effective Time which have not been resolved prior to the sixth anniversary of the Effective Time, until such matters are finally resolved) (the "D&O Insurance Period"). Parent shall cause to be maintained in effect for the D&O Insurance Period (the "Tail Insurance") the current policies of directors' and officers' liability insurance currently maintained by the Company, which policies are described on Section 4.16 of the Company Disclosure Schedule (the "Current D&O Policies"); provided, that the Parent may substitute therefor policies of comparable coverage (including, without limitation, coverage under Parent's existing polices of directors' and officers' liability insurance); provided, however, that in no event shall the Parent be required to expend in excess of $50,000 in the aggregate for the Tail Insurance, and if the cost of such Tail Insurance would exceed $50,000 in the aggregate, the Parent shall purchase the maximum amount of coverage for the D&O Insurance Period as is available for $50,000 in the aggregate. If the Tail Insurance cannot be maintained, expires or is terminated or cancelled during such six-year period, the Parent will use reasonable efforts to replace such coverage for the remainder of such period on terms and conditions substantially similar to the existing directors' and officers' insurance and indemnification policy; provided, however, that in no event shall the Parent be required to expend in excess of an aggregate of $50,000 to replace the Tail Insurance, and if the expense of replacing such Tail Insurance would exceed $50,000 in the aggregate, the Parent shall purchase the maximum amount of coverage for the D&O Insurance Period as is available for $50,000 in the aggregate. The provisions of this Section 7.3 are intended to be for the benefit of, and will be enforceable by, the individuals who were directors and officers of the Company immediately prior to the Effective Time. Notwithstanding the provisions of Section 3.4, this Section 7.3 shall survive the Claim Period in accordance with its terms.

ARTICLE VIII
CONDITIONS TO THE MERGER

Section 8.1 Conditions to the Obligations of Each Party to Consummate the Merger. The obligations of the Parties to consummate the Merger are subject to the satisfaction or, if permitted by applicable Law, waiver of the following conditions:

(a) The Parent, the Escrow Agent and the Stockholders' Agent shall have entered into the Escrow Agreement.

(b) This Agreement and the Merger shall have been duly approved by the requisite vote of the Company's stockholders in accordance with Delaware Law.

(c) All necessary consents of and filings required to be obtained or made by the Parent, the Company or the Stockholders with any Governmental Entity or agency relating to the consummation of the transactions contemplated by this Agreement shall have been obtained and made.

(d) No Governmental Order preventing the consummation of the transactions contemplated hereby shall be in effect, nor shall any Action seeking any of the foregoing be pending. No Action shall have been taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the transactions contemplated hereby, that makes the consummation thereof illegal. In the event a Governmental Order shall have been issued, or an Action for such an injunction or order be pending, each party agrees to use its commercially reasonable best efforts to have such Governmental Order lifted or such Action terminated.

Section 8.2 Conditions to the Obligations of the Company. The obligations of the Company to consummate the Merger, or to permit the consummation of the Merger are subject to the satisfaction or, if permitted by applicable Law, waiver of the following further conditions:

(a) Each of the representations and warranties of the Parent and the Merger Sub contained in this Agreement shall be true, complete and correct in all material respects (other than representations and warranties subject to "materiality" or "Material Adverse Effect" qualifiers, which shall be true, complete and correct as stated) both when made and on and as of the Effective Time as if made at and as of the Effective Time (other than (i) representations and warranties which address matters only as of a certain date which shall have been true, complete and correct as of such certain date, and (ii) failures to be true, complete and correct that do not, in the aggregate, constitute a Parent Material Adverse Effect), and the Parent and the Merger Sub shall have delivered to the Company and the Stockholders' Agent a certificate dated as of the Closing Date and signed by it to such effect.

(b) The Parent and the Merger Sub shall have performed or complied in all material respects with all covenants required by this Agreement to be performed or complied with by them on or prior to the Effective Time and the Parent and the Merger Sub shall have delivered to the Company and the Stockholders' Agent a certificate dated as of the Closing Date and signed by them to such effect.

(c) The Company and the Stockholders' Agent shall have received a certificate or certificates, dated as of the Closing Date and signed by an officer of the Parent and the Merger Sub, certifying the truth and correctness of attached copies of the Parent's and the Merger Sub's respective organizational documents (including amendments thereto) and resolutions of the Board of Directors of the Parent and the Merger Sub, respectively, approving such Party's entering into this Agreement, each Ancillary Document to which such Person is a party, and the consummation of the transactions contemplated hereby and thereby. The Parent and the Merger Sub shall have delivered to the Company and the Stockholders' Agent certificates dated within five Business Days prior to the Closing Date, duly issued by the applicable Governmental Entity in the State of Minnesota and the State of Delaware,

respectively, showing that the Parent and the Merger Sub are in good standing and qualified to do business in such jurisdictions.

(d) All necessary consents of and filings required to be obtained or made by the Parent and Merger Sub with any Governmental Entity or agency relating to the consummation of the transactions contemplated by this Agreement shall have been obtained and made.

(e) The Escrow Agent shall have received the Escrow Funds in accordance with Section 3.4.

(f) Subject to the terms and conditions of Section 3.5 of this Agreement, the Stockholders shall have received the aggregate Closing Cash, in the manner contemplated under Section 3.1 of this Agreement.

(g) The Stockholders' Agent shall have received such other documents and instruments as the Stockholders' Agent may reasonably request to effect the transactions contemplated hereby.

Section 8.3 Conditions to the Obligations of Parent. The obligations of the Parent to consummate the Merger are subject to the satisfaction or waiver of the following further conditions:

(a) Each of the representations and warranties of the Company contained in this Agreement shall be true, complete and correct in all material respects (other than representations and warranties subject to "materiality" or "Material Adverse Effect" qualifiers, which shall be true, complete and correct as stated) both when made and on and as of the Effective Time as if made at and as of the Effective Time (other than (i) representations and warranties which address matters only as of a certain date which shall have been true, complete and correct as of such certain date, and (ii) failures to be true, complete and correct that do not, in the aggregate, constitute a Company Material Adverse Effect), and the Company shall have delivered to the Parent a certificate dated as of the Closing Date and signed by it to such effect.

(b) The Company shall have performed or complied in all material respects with all covenants required by this Agreement to be performed or complied with by it on or prior to the Effective Time and the Company shall have delivered to the Parent a certificate dated as of the Closing Date and signed by it to such effect.

(c) The Parent shall have received a certificate or certificates, dated as of the Closing Date and signed by an officer of Company, certifying the truth and correctness of attached copies of the Organizational Documents and resolutions of the Company Board of Directors and the Stockholders, respectively, approving this Agreement, each Ancillary Document to which the Company is a party, and the consummation of the transactions contemplated hereby and thereby. The Company shall have delivered to the Parent certificates dated within five Business Days prior to the Closing Date, duly issued by the applicable Governmental Entity in the State of Delaware and the State of Arizona, respectively, showing that the Company and its Subsidiaries, as applicable, are in good standing and qualified to do business in such jurisdictions.

(d) There shall have been no Company Material Adverse Effect since the date of this Agreement.

(e) All necessary consents of and filings required to be obtained or made by the Company and any of its Subsidiaries with any Governmental Entity relating to the consummation of the transactions contemplated herein shall have been obtained and made. All consents and approvals of third parties listed in Sections 4.6(a) and 4.6(b) of the Company Disclosure Schedules shall have been obtained, and such consents or approvals shall not contain any conditions which would reasonably be expected to have a Company Material Adverse Effect.

(f) The Final Operating Sub Financials shall have been fully and finally determined and delivered in accordance with Section 3.2(a).

(g) The Parent shall have received satisfactory evidence that the Company shall have terminated the Company 401(k) Plan pursuant to a resolution or consent of the Company Board of Directors in the form attached hereto as Schedule 8.3(g).

(h) Each Stockholder shall have executed and delivered to Parent, and not revoked, the applicable Stockholder Closing Document.

(i) The minute books, stock certificates and stock ledger of the Company and the Operating Sub shall be at the Company's principal office.

(j) The Parent shall have received from each Stockholder certificates in the form contemplated under Section 3.5 of this Agreement (or affidavits for lost certificates in accordance with Section 3.5(a) of this Agreement) for all of the Shares owned or held by the Persons listed on Exhibit A and the signature pages hereto. This Agreement and the Merger shall have been approved and adopted by the requisite affirmative vote of the holders of Company Capital Stock required by Organizational Documents and applicable law, and the holders of no more than five percent (5%) of the outstanding Company Capital Stock shall have exercised or be eligible to exercise any appraisal rights with respect to the Merger.

(k) Except as provided in Section 7.2, as of the Closing Date, there shall be no material Liability of Parent or the Surviving Company for Employee Obligations or other employee compensation accrued or arising due to the transactions contemplated in this Agreement.

(l) Except for the UCC Termination Statements to be filed in accordance with Section 7.1(b) of this Agreement, Parent shall have received satisfactory evidence that the Company and Operating Sub have fully paid all Encumbrances.

(m) Electric IP shall have executed and delivered (and not revoked) the Transition Services Agreement to Parent in accordance with Section 6.15 of this Agreement.

(n) The Parent shall have received satisfactory evidence that the Company and Operating Sub have terminated the Sales Agreement pursuant the Termination of Sales Agreement in accordance with Section 6.16 of this Agreement.

(o) The Parent shall have received shall have received an opinion, dated the Closing Date, of Greenberg Traurig, LLP, counsel to the Company and the Stockholders, in form attached hereto as Exhibit K.

(p) The existing officers and directors of the Company and the Operating Sub shall have submitted resignations to be effective as of the Effective Time; provided, however, that with respect to any such officers and directors that are also employees of the Company and the Operating Sub, such resignations shall only be effective with respect to their positions as officers and directors and shall not serve as resignations from employment.

(q) With respect to any payments or benefits that the Parent determines may constitute a Section 280G Payment, the stockholders of the Company shall have approved, pursuant to the method provided for in the regulations promulgated under Section 280G of the Code, any such Section 280G Payments or shall have disapproved such payments and/or benefits, and, as a consequence, no Section 280G Payments shall be paid or provided for in any manner and the Parent and its subsidiaries shall not have any liabilities with respect to any Section 280G Payments.

(r) Company shall have divested itself of all of its ownership interests in the Excluded Subsidiaries pursuant to Section 6.11 of this Agreement.

(s) The (i) Existing Scottsdale Switch Agreements shall be in full force and effect and no party thereto shall have notified any other party that they will not continue to fulfill the terms and conditions of such agreement and (ii) the Amendment to Scottsdale Switch Agreements shall have been executed and delivered by the Company, SRPMIC and the other parties thereto.

(t) The Parent shall have received such other documents and instruments as the Parent may reasonably request to effect the transactions contemplated hereby.

ARTICLE IX
TAXES

Section 9.1 Obligations to Indemnify for Taxes. Notwithstanding anything in this Agreement to the contrary, the Parent and the Surviving Corporation shall be indemnified and held harmless for, from and against all Liability for all Taxes of the Company and any of its Subsidiaries (i) in respect of any Pre-Closing Tax Period, to the extent such Taxes exceed the current liability for Taxes shown on the Closing Balance Sheet after taking into account and giving the Stockholders credit for any Taxes included in the liabilities reflected on the Closing Balance Sheet; (ii) as a result of any breach of a representation in Section 4.15; (iii) any Taxes of any other Person imposed on the Company or any of its Subsidiaries as a result of Treasury Regulation 1.1502.6 or similar provision of state, local or foreign law; and (iv) any Taxes which are due or payable to any state, including, without limitation, the State of Delaware or the State of Arizona, for any franchise or sales and use taxes (including interest and penalties). In the case of any Straddle Period, the Taxes of the Company and any of its Subsidiaries shall be computed in the manner prescribed in the second sentence of Section 4.15(a). For the avoidance of doubt, subject to the limitations set forth in Section 10.1 of this Agreement, each Parent Indemnified

Person shall be indemnified for any Tax Liabilities in connection with any Excluded Subsidiary or the Excluded Subsidiaries Transaction.

Section 9.2 Procedures Relating to Indemnification for Tax Claims.

(a) Parent shall notify the Stockholders' Agent in writing upon receipt by Parent or the Surviving Corporation of any notice of pending or threatened federal, state, local or foreign Tax audits or assessments that may affect the Tax Liabilities of the Company or any of its Subsidiaries for which the Parent shall be indemnified pursuant to Section 9.1; provided that failure to comply with this provision shall not affect Parent's right to indemnification hereunder. Any payment required to be made to the Parent under this Article IX shall be made exclusively from the Escrow Account.

(b) If any claims shall be made by any Tax authority that, if successful, would result in the indemnification of a Parent Indemnified Person (the "Indemnified Taxpayer"), the Indemnified Taxpayer shall promptly notify the Stockholders' Agent in writing of such fact; provided, however, that any failure to give such notice will not waive any rights of the Indemnified Taxpayer except to the extent that the indemnifying party's rights or ability to defend are materially prejudiced.

(c) The Indemnified Taxpayer shall inform the Stockholders' Agent of the progress of any such claim or any proceeding related thereto from time to time or as reasonably requested by Stockholders' Agent.

Section 9.3 Preparation and Filing of Tax Returns; Refunds and Credits.

(a) The Stockholders' Agent, on behalf of the Stockholders, shall prepare and file or cause to be prepared and filed or cause to be filed all Tax Returns of the Company which are required to be filed after the Closing Date in respect of all Pre-Closing Tax Periods. The Parent shall have the opportunity to review such Tax Returns and the Stockholders shall provide such Tax Returns to the Parent (for the Parent's review and comment) at least thirty (30) days prior to the due date. The Parent shall prepare and file all other Tax Returns of the Company.

(b) If the Company or the Operating Sub has any increase in Tax Liability by reason of an adjustment by a taxing authority with respect to a Pre-Closing Tax Period and such adjustment has the effect of decreasing deductions or credits, or increasing income, for any taxable year or taxable period ending after the Closing Date, the Parent shall be paid an amount equal to the Tax cost (taking into account any Tax benefits actually and currently realized in connection therewith) attributable to such decreased deductions or credits, or increased income, as and when the Company, or any consolidated, affiliated, combined, unitary or other similar Tax group of which the Company may be a member actually suffers such detriment.

(c) The Parent shall cause the Surviving Corporation to retain all Tax Returns, schedules, work papers and all material records and other documents relating thereto, until the expiration of the applicable statutes of limitation (and, to the extent notified by any party, any extensions thereof) for the taxable periods to which such Tax Returns, schedules, work papers and other material records relate until the final determination of any Tax in respect of such taxable periods. Any information retained under this Section 9.3 shall remain confidential,

except as may be necessary to be disclosed in connection with filing any Tax Return, amended Tax Return or claim for refund, determining any Tax liability or right to refund of Taxes or conducting or defending any audit or other proceeding in respect of Taxes. Any refund from Tax Returns that are in respect of any Pre-Closing Tax Period shall be paid to the Stockholders' Agent, who shall pay such amount to the Stockholders in accordance with their Share Percentage.

(d) Any amended Tax Return of the Company or any of its Subsidiaries or any claim for Tax refund on behalf of the Company or any of its Subsidiaries for any Pre-Closing Tax Period shall be filed, or caused to be filed, only by the Stockholders' Agent. The Stockholders' Agent shall not, without the prior written consent of the Parent (which consent shall not be unreasonably withheld or delayed) make or cause to be made, any such filing, to the extent such filing, if accepted, reasonably might change the Tax Liability of the Company (or the Surviving Corporation) or any of its Subsidiaries or the Parent for any period ending on or after the Closing Date.

Section 9.4 Assistance and Cooperation. After the Closing Date, the Parent, on the one hand, and the Stockholders' Agent, on the other hand, shall provide each other, and the Parent shall cause the Company to provide the Stockholders' Agent, with such cooperation and information relating to the Company as any other Party may reasonably request in (a) filing any Tax Return, amended Tax Return or claim for refund, (b) determining any Tax liability or a right to refund of Taxes, (c) conducting or defending any audit or other proceeding in respect of Taxes or (d) effecting the terms of this Agreement. After the Closing Date, each of the Parent and the Stockholders' Agent shall:

(a) timely sign and deliver such certificates and forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports or extensions with respect to, Taxes described therein;

(b) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing, including giving access, upon reasonable request, to information, records and documents necessary to prepare such Tax Returns; and

(c) cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, Taxes attributable to the Company or any of its Subsidiaries.

Section 9.5 Transfer Taxes. Notwithstanding anything in this Agreement to the contrary, all transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with the transactions contemplated by this Agreement (collectively, "Transfer Taxes"), shall be borne by the Stockholders severally and not jointly and in proportion to each Stockholder's Share Percentage. The Stockholders' Agent will prepare and file (or cause to be prepared and filed) all necessary Tax Returns and other documentation with respect to all such Transfer Taxes and, if required by applicable Law, Parent will join in the execution of any such Tax Returns and other documentation.

ARTICLE X
INDEMNIFICATION AND ESCROW

Section 10.1 The Escrow Fund.

(a) The Escrow Fund shall be available from and after the Effective Time to indemnify and hold harmless, the Parent and each of its Affiliates (including the Company after the Closing), directors, officers and each other Person, if any, controlling the Parent (each a "Parent Indemnified Person") from and against any liability, obligation, loss or expense (including, without limitation, the reasonable fees of counsel and all other reasonable expenses incurred by any such Person in connection with investigating, preparing or defending any action or claim, pending or threatened, that is subject to indemnification hereunder, whether or not such Person is a party hereto), or actions or claims in respect thereof (each a "Loss"), to which such Parent Indemnified Person becomes subject as a result of, or based upon or arising out of, directly or indirectly any of the following:

(i) any inaccuracy in, or breach of, the representations and warranties made by the Company in or pursuant to this Agreement on the date hereof and on the Closing Date, any Ancillary Document or any other document or certificate delivered pursuant to this Agreement or any Ancillary Document;

(ii) any breach of a covenant or agreement made by the Company in this Agreement, including, without limitation, any obligations for any Payment owed to Parent pursuant to the Closing Net Working Capital in accordance with the provisions set forth in Section 3.3;

(iii) any Liability or Losses incurred by the Parent or the Surviving Corporation related to any Employee Obligations, Outstanding Indebtedness or Expenses incurred by the Company or its Subsidiaries not paid or satisfied at Closing;

(iv) any Dissenting Shares Excess Payments;

(v) any Liability or Losses incurred by the Parent or the Surviving Corporation related to any Tariff Matters that are not reflected in the Financial Statements or the Company Disclosure Schedules;

(vi) any Losses incurred by the Parent or the Surviving Corporation related to any Liabilities of the Excluded Subsidiaries;

(vii) any indemnification obligations under Article IX (Taxes); or

(viii) Fraud.

(b) The foregoing indemnification shall include, in each case, amounts to reimburse any Parent Indemnified Person for all reasonable expenses (including fees and expenses of counsel) as they are incurred by such Parent Indemnified Person in connection with investigating, preparing or defending, any action or claim pending or threatened, whether or not such Parent Indemnified Person is a party thereto.

Section 10.2 Obligations of Parent. As consideration for the commitment of the Parties hereunder, subject to the conditions and limitations set forth in this Article X, the Parent agrees to indemnify and hold harmless the Stockholders and each of their respective Affiliates, directors, officers, members, managers, partners, agents and employees and each other Person, if any, controlling the Stockholders or any of their respective Affiliates (each a "Stockholder Indemnified Person") from and against any Loss to which such Stockholder Indemnified Person becomes subject as a result of, or based upon or arising out of, directly or indirectly, any of the following:

(a) any inaccuracy in, or breach of any of the representations and warranties made by the Parent or the Merger Sub in Article V, on the date hereof and on the Closing Date; or

(b) any breach of a covenant or agreement made by the Parent or Merger Sub in or pursuant to this Agreement, including, without limitation, any obligations for any Payment owed to the Stockholders pursuant to the Closing Net Working Capital in accordance with the provisions set forth in Section 3.3.

The foregoing indemnification shall include, in each case, an obligation by the Parent to reimburse any Stockholder Indemnified Person for all reasonable expenses (including the reasonable fees and expenses of counsel) as they are incurred by such Stockholder Indemnified Person in connection with investigating, preparing or defending any action or claim pending or threatened, whether or not such Stockholder Indemnified Person is a Party.

Section 10.3 Procedures for Claims.

(a) Each Parent Indemnified Person and Stockholder Indemnified Person shall be referred to herein as an "Indemnified Person." Any Indemnified Person seeking indemnification with respect to any actual or alleged Loss shall give written notice to the Person from whom indemnification is sought (each, an "Indemnifying Person") promptly after the Indemnified Person becomes aware of such Loss, specifying in reasonable detail the basis on which indemnification is sought and the amount of the asserted Losses, and, in the case of a Third Party Claim (as defined below), such other relevant information that the Indemnified Person may have in its possession regarding such claim. Failure to provide the specified notice, however, will not affect the Indemnified Person's rights to indemnity hereunder from the Indemnifying Person, unless the Indemnifying Person can show material prejudice resulting from such failure and then only to the extent of such material prejudice (provided that the Indemnifying Person shall have no liability whatsoever under this Article X or otherwise if notice of a claim was not provided within the applicable survival period relating to such claim as set forth in Section 10.4).

(b) If any Loss is asserted by any third party against any Indemnified Person ("Third Party Claim"), the Indemnifying Person shall have the right, unless otherwise precluded by applicable Law or this Section 10.3, to conduct and control the defense, compromise or settlement of any Action giving rise to such Third Party Claim or threatened Action brought against the Indemnified Person in respect of matters addressed by the indemnity set forth in this Article X, subject to the following:

(i) The Indemnifying Person must consult with the Indemnified Person with respect to the handling of such Third Party Claim and the Indemnifying Person must employ counsel reasonably satisfactory to the Indemnified Person;

(ii) The Indemnifying Person must furnish the Indemnified Person with evidence to the Indemnified Person's reasonable satisfaction that the Indemnifying Person is and will be able to satisfy any such liability; and

(iii) The Indemnifying Person must not settle or compromise any Action without the express written consent of the Indemnified Person if such settlement involves the issuance of monetary relief (other than the payment by Parent of all or any portion of the Basket (as defined below)) or the issuance of injunctive or other forms of non-monetary relief, in either case binding upon the Indemnified Person, or a plea of guilty, or *nolo contendre* on the part of any Indemnified Person in any criminal or quasi-criminal Action or which involves any admission of liability, responsibility, culpability or guilt on the part of the Indemnified Person or which has any collateral estoppel effect on the Indemnified Person.

(c) If an offer of settlement or compromise solely for monetary damages (a "Proposed Settlement Amount") is received by or communicated to the Indemnifying Person with respect to a Third Party Claim and the Indemnified Person notifies the Indemnifying Person in writing of the Indemnified Person's willingness to settle or compromise such Third Party Claim for the Proposed Settlement Amount and the Indemnifying Person declines to accept the Proposed Settlement Amount, the Indemnifying Person may continue to contest such Third Party Claim, and the Indemnified Person may participate in the settlement or defense of such Third Party Claim. If the Indemnifying Person declines to accept the Proposed Settlement Amount and the amount the Indemnified Party is obligated to pay (the "Actual Settlement Amount") as a result of the Indemnifying Person continuing to contest such Third Party Claim (including costs and expenses of the Indemnified Person with respect thereto) is greater than the Proposed Settlement Amount, then the Indemnifying Person shall be obligated to pay the excess of the Actual Settlement Amount over the Proposed Settlement Amount subject to the Basket and any limitation on indemnification set forth in Section 10.5 and only the amount of the Proposed Settlement Amount will be applied toward the Basket and the other limitations on indemnification set forth in Section 10.5. If the Indemnifying Person declines to accept the Proposed Settlement Amount and the Actual Settlement Amount is less than the Proposed Settlement Amount, then the Actual Settlement Amount shall be subject to the Basket and the other indemnification limitations set forth in Section 10.5.

(d) The Indemnifying Person shall not be entitled to assume control of any Third Party Claim and shall pay the reasonable fees and expenses of counsel retained by the Indemnified Person if: (A) the Third Party Claim relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation; (B) the Indemnified Person reasonably believes an adverse determination with respect to the Action or other claim giving rise to such claim for indemnification would be detrimental in any material respect to or injure in any material respect the Indemnified Person's reputation or future business prospects; (C) the parties to any Action or threatened Action (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and the Indemnifying Person shall have been advised by counsel for the Indemnified Person that there may be one or more defenses available

to the Indemnified Person that are not available to the Indemnifying Person or legal conflicts of interest pursuant to applicable rules of professional conduct between the Indemnifying Person and the Indemnified Person; or (D) the claim seeks an injunction or equitable relief against the Indemnified Person that could reasonably be expected to have a material adverse impact on the Indemnified Person. With respect to the Actions that are the subject of this paragraph (d), the Indemnifying Person shall have the right to retain its own counsel (but the expenses of such counsel shall be at the expense of the Indemnifying Person) and participate therein, and no Indemnifying Person shall be liable for any settlement of any such action, proceeding or claim without its written consent (which consent shall not be unreasonably withheld). Subject to the foregoing, if the Indemnifying Person elects to assume and control the defense of a Third Party Claim, it will provide notice thereof within 30 days after the Indemnified Person has given notice of the matter. In such circumstances, the Indemnified Person shall have the right to employ counsel separate from counsel employed by the Indemnifying Person in any such Action and to participate in the defense thereof, but the fees and expenses of such counsel employed by the Indemnified Person shall be at the expense of the Indemnified Person unless (x) the employment thereof has been specifically authorized by the Indemnifying Person in writing or (y) the Indemnifying Person has failed to assume the defense and employ counsel.

(e) If the Indemnifying Person elects to assume and control or participate in the defense, the Indemnified Person shall take all reasonable efforts necessary to assist the Indemnifying Person in such defense and shall make available to the Indemnifying Person any books, records or other documents within its control that are necessary or appropriate for such defense and shall otherwise cooperate in the defense.

(f) Upon determination of the amount due to an Indemnified Party under this Article X ("Indemnification Amount") with respect to a matter for which indemnification is sought ("Indemnification Matter") (whether by agreement between the Indemnifying Person and the Indemnified Person or after a settlement agreement is executed or a final order is rendered by a court of competent jurisdiction with respect to the Indemnification Matter), the Indemnifying Person shall promptly (and in any event, not later than 10 days after such determination) pay the Indemnification Amount, by wire transfer or delivery of other immediately available funds to an account designated by the Indemnified Person subject to the limitations specifically set forth in this Article X.

(g) After delivery of a claim for indemnification under this Article X, so long as any right to indemnification exists pursuant to this Article X, the affected parties each agree to retain all books and records related to such claim. Any information or documents made available to any Party hereunder and designated as confidential by the Party providing such information or documents and which is not otherwise generally available to the public and not already within the knowledge of the Party to whom the information is provided (unless otherwise covered by the confidentiality provisions of any other agreement among the Parties hereto, or any of them), and except as may be required by applicable Law, shall not be disclosed to any third Person (except for the Representatives of the Party being provided with the information, in which event the Party being provided with the information shall request its Representatives not to disclose any such information which it otherwise required hereunder to be kept confidential).

Section 10.4 Survival. The representations and warranties made by the Parties in this Agreement, including the indemnification obligations of the Parties set forth in this Article X, shall survive and continue in full force and effect until the end of the Claim Period, and no Party shall have any liability with respect to any such matter if notice of a claim regarding such matter has not been provided on or prior to the last day of the Claim Period. Subject to the Claim Period, all covenants and agreements made by the Parties shall survive the Closing in accordance with their respective terms.

Section 10.5 Limitations on Certain Indemnification Obligations Under Article X.

(a) Except for any Losses arising from or related to (A) the breach of any representations and warranties contained in Section 4.15 (Taxes) or Section 4.21 (Brokers) and (B) any claim for indemnification being made by a Parent Indemnified Person pursuant to Sections 10.1(a)(ii), (iii), (vii) or (viii) (collectively, the "Special Matters"), there shall be no indemnification obligation under Section 10.1(a) or Section 10.1(b) until the aggregate amount of all indemnification claims thereunder exceeds $100,000 (the "Basket"), calculated for purposes of this Article X without regard to any materiality standard contained in the applicable representation or warranty, and in which case the indemnification obligation shall be for the amount of such claims in excess of such $100,000 threshold.

(b) For any Losses arising from or related to any Special Matters, the indemnification obligation shall be for the amount of such Losses on a first-dollar basis without regard to the Basket.

(c) Except as set forth in Section 10.7 relating to equitable remedies, recovery from the Escrow Fund in accordance with this Article X and the Escrow Agreement shall be the sole and exclusive remedy after the Effective Time for any Losses set forth in Section 10.1(a) (the "Escrow Cap").

(d) For all purposes of this Article X, "Losses" shall be net of (i) any insurance or other recoveries payable to the Indemnified Person in connection with the facts giving rise to the right of indemnification and (ii) any Tax benefit available to such Indemnified Person arising in connection with the accrual, incurrence or payment of any such Losses (including, without limitation, the net present value of any Tax benefit arising in subsequent taxable years).

Section 10.6 Indemnity Payments.

(a) If the Parent agrees to or is determined to have an obligation to reimburse any Party under this Article X, then the Parent shall promptly pay such amount to the applicable Party by wire transfer of immediately available funds to the bank and account specified by the Party in writing.

(b) Any payment by Parent required under this Article X to satisfy a Stockholder Indemnified Person's Losses which is not made when due shall bear interest at the rate of 10% per annum or, if less, the maximum rate permitted by applicable usury Laws. Interest on any such unpaid amount shall be compounded monthly, computed on the basis of a 360-day year and shall be payable on demand. In addition, Parent shall reimburse the

Stockholder Indemnified Person for any and all reasonable costs or expenses of any nature or kind whatsoever (including all reasonable attorneys' fees) incurred in seeking to collect such amount owed.

(c) The Parent, the Surviving Corporation and the Stockholders' Agent shall cooperate with each other with respect to resolving any claim or liability with respect to which one Party is obligated to indemnify another Party hereunder, including by making commercially reasonable efforts to mitigate or resolve any such claim liability. In the event that Parent, the Surviving Corporation, the Stockholders' Agent or any Stockholder shall fail to make such commercially reasonably efforts to mitigate or resolve any claim or liability, then notwithstanding anything else to the contrary contained herein, the other Part(ies) shall not be required to indemnify any Person for any loss, liability, claim, damage or expense that could reasonably be expected to have been avoided if Parent, the Surviving Corporation the Stockholders' Agent or such Stockholder, as the case may be, had made such efforts.

(d) All payments made pursuant to this Article X shall be treated as an adjustment to the Purchase Price for Tax purposes.

Section 10.7 Remedies.

(a) Each Party acknowledges that because of the difficulty of measuring economic losses attributable to the breach of a Party's obligations under this Agreement or failure to consummate the transactions contemplated hereby in accordance with the terms of this Agreement, and because of the immediate and irreparable damage that would be caused for which there would be no other adequate remedy, the Parties hereto hereby agree that the applicable provisions of this Agreement may be enforced against the breaching Party by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. Each Party hereto hereby agrees to waive the defense that a remedy at Law would be adequate in any action for specific performance under this Section 10.7.

(b) Except as otherwise expressly provided in Article IX and Section 10.7(a), the indemnity provisions provided for in this Article X shall be the exclusive remedies of the parties to this Agreement and their respective officers, directors, members, managers, partners, employees, Affiliates, agents, representatives, successors and assigns for any and all matters, claims, actions or the like, including, but not limited to, for any breach of a representation, warranty, covenant or other agreement contained in this Agreement and such parties shall not be entitled to a rescission of this Agreement or to any further rights (indemnification or otherwise) or claims of any nature whatsoever in respect thereof, all of which the parties hereto, hereby waive.

(c) Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

Section 10.8 Escrow Funds; Claim Period.

(a) The Parent shall deposit the Escrow Funds into the Escrow Account to be held by the Escrow Agent pursuant to Section 3.4; the Escrow Funds and the Escrow Account shall be governed by the terms set forth herein and in the Escrow Agreement. The Escrow Funds shall be subject to reduction to satisfy the indemnification obligations of the Stockholders under this Article X. Claims for Losses by the Parent that: (i) are accepted as valid by the Stockholders' Agent; or (ii) are otherwise determined to be valid in accordance with the terms of this Agreement and the Escrow Agreement, shall be paid by the Escrow Agent to the Parent from the Escrow Funds.

(b) The Escrow Funds shall be held in the Escrow Account by the Escrow Agent pursuant to the applicable periods provided in Section 3.4; provided, however, that a portion of the Escrow Funds, which, in the reasonable judgment of Parent, subject to the objection of the Stockholders' Agent and the final disposition of the matter, are necessary to satisfy any unsatisfied claims specified in any notice of a claim theretofore delivered to the Escrow Agent prior to the First Distribution Date or the termination of the Claim Period, as applicable, with respect to facts and circumstances existing prior to the First Distribution Date or the expiration of the Claim Period, as applicable, shall remain in the Escrow Fund until such claims have been resolved. Such retained portion of the Escrow Funds shall be retained only until the claim for indemnification pursuant to which such portion is being retained is settled or finally determined between Parent and the Stockholders' Agent.

Section 10.9 Stockholders' Agent.

(a) At the Effective Time, Jack O. Pleiter shall be constituted and appointed as agent (the "Stockholders' Agent") for and on behalf of the Stockholders to act on their behalf under the Escrow Agreement, to give and receive notices and communications, to authorize delivery of Escrow Funds from the Escrow Account in accordance with the terms of this Agreement, to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, and to take all actions necessary or appropriate in the judgment of the Stockholders' Agent for the accomplishment of the foregoing. Additionally, the Stockholders' Agent shall be and serve as the lawful attorney-in-fact of each the Stockholders with respect to any waiver or amendment of this Agreement pursuant to Section 11.3 and Section 11.5 hereof, respectively. Such agency may be changed by the holders of a majority in interest of the cash then on deposit in the Escrow Account from time to time upon not less than 15 days' prior written notice to Parent, the Stockholders' Agent and the Escrow Agent. No bond shall be required of the Stockholders' Agent, and the Stockholders' Agent shall receive no compensation for his services from the Parent or the Surviving Corporation. Notices or communications to or from the Stockholders' Agent shall constitute notice to or from each Stockholder. The Stockholders' Agent may resign at any time. If a replacement stockholders' agent has not been appointed in accordance with the provisions of this Section 10.9 to serve as of the effective time of the resignation of the Stockholders' Agent or any successor stockholders' agent shall serve as the Stockholders' Agent as of the effective time of such resignation until he is replaced in accordance with the provisions of this Section 10.9.

(b) The Stockholders' Agent shall not be liable for any act done or omitted hereunder as Stockholders' Agent while acting in the absence of adjudicated gross negligence, willful misconduct or bad faith and any act done or omitted pursuant to the advice of counsel or other expert shall be conclusive evidence of such conduct. The Escrowed Stockholders shall severally indemnify the Stockholders' Agent and hold him harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Stockholders' Agent and arising out of or in connection with the acceptance or administration of his duties hereunder.

(c) The Stockholders' Agent shall have reasonable access to information about the Surviving Corporation and the reasonable assistance of the Surviving Corporation's officers and employees for purposes of performing his duties and exercising his rights hereunder, provided that the Stockholders' Agent shall treat confidentially and not disclose any nonpublic information from or about the Surviving Corporation to anyone (except on a need to know basis to individuals who agree to treat such information confidentially). Any fees and expenses incurred by Stockholders' Agent in connection with actions taken pursuant to the terms of this Agreement will be paid by the stockholders that have cash on deposit in the Escrow Fund (the "Escrowed Stockholders") to the Stockholders' Agent. Such fees and expenses shall first be satisfied from any Escrow Funds not subject to a Claim (as defined in the Escrow Agreement) by Parent and remaining available for release to the Escrowed Stockholders on the final release date. Prior to any payment to the Stockholders' Agent for such fees and expenses from the Escrow Funds, the Stockholders' Agent shall deliver to the Escrow Agent written statement of such fees and expenses.

Section 10.10 Actions of the Stockholders' Agent. A decision, act, consent or instruction of the Stockholders' Agent with respect to the Escrow Funds, the Escrow Account and the Escrow Agreement shall constitute a decision of all Escrowed Stockholders and shall be final, binding and conclusive upon each such Escrowed Stockholder. The Escrow Agent and Parent may rely upon any decision, act, consent or instruction of the Stockholders' Agent as being the decision, act, consent or instruction of each and every such Escrowed Stockholder. The Escrow Agent and Parent are hereby relieved from any liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholders' Agent.

ARTICLE XI
TERMINATION, AMENDMENT AND WAIVER

Section 11.1 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, notwithstanding any requisite adoption and approval of this Agreement, as follows:

(a) by mutual written consent of each of the Parent and the Company;

(b) by either the Parent or the Company, if the Effective Time shall not have occurred on or before March 31, 2007; provided, however, that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any Party whose material breach of this Agreement shall have caused, or resulted in, the failure of the Effective Time to occur on or before such date;

(c) by either the Parent or the Company, if any Governmental Order, writ, injunction or decree preventing the consummation of the Merger shall have been entered by any court of competent jurisdiction and shall have become final and nonappealable;

(d) by the Parent, 10 Business Days after receipt by the Company of a written notice from the Parent of a breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, or if any representation or warranty of the Company shall have become untrue, incomplete or incorrect, in either case such that the conditions set forth in Section 8.3(a) or (b) would not be satisfied; provided, however, that if such breach is curable by the Company through the exercise of its reasonable efforts within 10 Business Days and for so long as the Company continues to exercise such reasonable efforts, the Parent may not terminate this Agreement under this Section 11.1(d); and provided, further that the preceding proviso shall not in any event be deemed to extend any date set forth in paragraph (b) of this Section 11.1;

(e) by the Parent or the Company if the EBITDA Adjustment Amount would result in a reduction in the Cash Consideration of more than $5,000,000 (an "EBITDA Event"); or

(f) by the Company, 10 Business Days after receipt by the Parent of a written notice from the Company of breach of any representation, warranty, covenant or agreement on the part of Parent set forth in this Agreement, or if any representation or warranty of the Parent shall have become untrue, incomplete or incorrect, in either case such that the conditions set forth in Section 8.2(a) or (b) would not be satisfied; provided, however, that if such breach is curable by Parent through the exercise of its reasonable efforts within 10 Business Days and for so long as Parent continues to exercise such reasonable efforts, the Company may not terminate this Agreement under this Section 11.1(f); and provided, further that the preceding proviso shall not in any event be deemed to extend any date set forth in paragraph (b) of this Section 11.1.

The right of any Party to terminate this Agreement pursuant to this Section 11.1 will remain operative and in full force and effect regardless of any investigation made by or on behalf of any Party, any Person controlling any such Party or any Representative of such Party, whether prior to or after the execution of this Agreement. For the avoidance of doubt, if an EBITDA Event occurs and Parent does not terminate this Agreement pursuant to Section 11.1(e), any determination of whether a Company Material Adverse Effect has occurred shall be made without regard to the occurrence of such EBITDA Event.

Section 11.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 11.1, this Agreement shall forthwith become void, there shall be no liability under this Agreement on the part of any Party hereto or any of its Affiliates or any of its or their officers or directors, and all rights and obligations of each Party shall cease; provided, however, that nothing herein shall relieve any Party from liability for the breach that occurs prior to the Agreement's termination of any of its representations and warranties or the breach of any of its covenants or agreements set forth in this Agreement. No termination of this Agreement shall affect the obligation of the Parties contained in any Confidentiality Agreement between the Parent (or one of its Affiliates) and the Company (or its Affiliates), which shall survive termination of this Agreement and remain in full force and effect in accordance with its terms.

No termination of this Agreement shall affect the obligation of any Party for all Expenses incurred in connection with this Agreement and the Merger which shall be paid by the Party incurring such Expenses, whether or not the Merger is consummated.

Section 11.3 Amendment. This Agreement may be amended by the Parties at any time prior to the Effective Time; provided, however, that, after the approval of this Agreement by the Stockholders, no amendment may be made that changes the amount or type of consideration into which Company's capital stock will be converted pursuant to this Agreement. This Agreement may not be amended except by amendment in writing signed by the Parent, the Company, and the Stockholders' Agent, and any such amendments will be valid, binding upon, and effective against all other Parties hereto, whether or not they are signatories to such amendments.

Section 11.4 Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the Ancillary Documents and the transactions contemplated hereby and thereby shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated; provided, however, that the Company shall pay all of the Expenses of the Company on or prior to the Closing.

Section 11.5 Waiver. At any time prior to the Effective Time, any Party may (a) extend the time for or waive compliance with the performance of any obligation or other act of any other Party, (b) waive any inaccuracy in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance by the other Party with any of the agreements or conditions contained herein. Any such extension or waiver as it applies to or is binding on the Company or the Stockholders may be effected solely by the written waiver of the Company and the Stockholders' Agent, and any such extension or waiver as it applies to or is binding on the Parent or the Merger Sub may be effected solely by the written waiver of the Parent, and any such waivers shall be valid, binding upon, and effective against all other Parties hereto, whether or not they have separately consented to such any such waivers; provided, however, that, without the requisite consent of the Stockholders under Delaware Law, such amendments executed by the Stockholders' Agent shall only be valid to the extent that they do not have the effect of reducing the Merger Consideration otherwise due to the Stockholders.

ARTICLE XII
GENERAL PROVISIONS

Section 12.1 Notices. All notices, requests, claims, demands or other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (a) when delivered, if delivered by hand, (b) one business day after transmitted, if transmitted by a nationally recognized overnight courier service, (c) when sent by facsimile, if transmitted by facsimile, (which is confirmed), or (d) three business days after mailing, if mailed by registered or certified mail (return receipt requested), to the parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 12.1):

(a) if to Company (prior to Closing):

Mountain Telecommunications, Inc.
1430 West Broadway, Suite A-200
Tempe, AZ 85282
Attention: Chief Executive Officer
Facsimile: (480) 850-9599

if to Company (after Closing):

Jack O. Pleiter
c/o Greenberg Traurig, LLP
2375 Camelback Road
Suite 700
Phoenix, Arizona 85016
Attention: Scott K. Weiss, Esq.
Facsimile: (602) 445-8632

with a copy to (in each case):

Greenberg Traurig, LLP
2375 East Camelback Road
Suite 700
Phoenix, Arizona 85016
Attention: Scott K. Weiss, Esq.
Facsimile: (602) 445-8632

(b) if to Parent or Merger Sub:

Eschelon Telecom, Inc.
730 2nd Ave. S.
Suite 900
Minneapolis, MN 55402
Attention: President
Facsimile: (612) 436-6726

with a copy to:

DLA Piper Rudnick Gray Cary US LLP
1775 Wiehle Avenue
Suite 400
Reston, Virginia
Attention: Jason C. Reis, Esq.
Facsimile: (703) 773-5000

(c) if to Stockholders' Agent:

Jack O. Pleiter
c/o Greenberg Traurig, LLP

2375 Camelback Road
Suite 700
Phoenix, Arizona 85016
Attention: Scott K. Weiss, Esq.
Facsimile: (602) 445-8632

Section 12.2 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Merger is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner to the fullest extent permitted by applicable Law in order that the Merger may be consummated as originally contemplated to the fullest extent possible.

Section 12.3 Assignment; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties (whether by operation of Law or otherwise) without the prior written consent of the other Parties. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 12.4 Incorporation of Exhibits. The Company Disclosure Schedules, the Parent Disclosure Schedules and all Annexes attached hereto and referred to herein are hereby incorporated herein and made a part of this Agreement for all purposes as if fully set forth herein.

Section 12.5 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE OTHER THAN CONFLICT OF LAWS PRINCIPLES THEREOF DIRECTING THE APPLICATION OF ANY LAW OTHER THAN THAT OF DELAWARE. FEDERAL AND STATE COURTS WITHIN THE STATE OF DELAWARE WILL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY. THE PARTIES HEREBY CONSENT TO AND AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS. EACH OF THE PARTIES HERETO WAIVES, AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (I) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, (II) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS OR (III) ANY LITIGATION COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM.

Section 12.6 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION OR AGREEMENT

CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

Section 12.7 Headings; Interpretation. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.8 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Section 12.9 No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of each of the parties and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

Section 12.10 No Presumption Against Drafting Party. Parent and each of the Stockholders acknowledge that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

Section 12.11 Entire Agreement. This Agreement (including the Annexes, the Schedules, the Parent Disclosure Schedules and the Company Disclosure Schedules) and the Confidentiality Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto. Except as provided in Section 12.3 or Section 12.5 above, no addition to or modification of any provision of this Agreement shall be binding upon any party hereto unless made in writing and signed by all parties hereto.

Section 12.12 Acknowledgement and Conflict Waiver. Parent and Eschelon acknowledge that the law firm of Greenberg Traurig, P.A. ("GT") has historically represented the Company and is currently representing the Company in connection with other matters. Parent and Eschelon further acknowledge that GT represented the Company in connection with the transactions contemplated by this Agreement and intends to represent the interests of one or more of the Stockholders (in various capacities) and the Stockholders' Agent following the Closing. To the extent that Parent or Eschelon request that GT continue to represent the interests of the Surviving Corporation in connection with the Pending Matters following the Closing, each of the Company, the Stockholders, the Stockholders' Agent, Parent, and Eschelon (a) acknowledge and agree that each Party has been represented by counsel and is fully informed

about the matters discussed in this Section 12.12; (b) consent to and waive any objections with respect to the involvement of GT in connection with the Pending Matters or the representation of the Surviving Corporation, the Stockholders, or the Stockholders' Agent following the Closing; and (c) consent to and waive any objections with respect to the present and future representation of the other Party by GT in connection with any and all matters and transactions that are not substantially related to the transactions contemplated by this Agreement.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be executed as of the date first written above by their respective officers thereunto duly authorized.

ESCHELON OPERATING COMPANY, INC., a Minnesota corporation

By: _____
Name: Richard A. Smith
Title: President / CEO

MOUNTAIN TELECOMMUNICATIONS, INC., a Delaware corporation

By: _____
Name: Jack O. Pleiter
Title: Chief Executive Officer

MOUNTAIN ACQUISITION CORP., a Delaware corporation

By: _____
Name: Richard A. Smith
Title: President / CEO

JACK O. PLEITER AS STOCKHOLDERS' AGENT

_____
Jack O. Pleiter

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be executed as of the date first written above by their respective officers thereunto duly authorized.

ESCHELON OPERATING COMPANY, INC., a Minnesota corporation

By:_____
Name:
Title:

MOUNTAIN TELECOMMUNICATIONS, INC., a Delaware corporation

By:_____
Name: Jack O. Pleiter
Title: Chief Executive Officer

MOUNTAIN ACQUISITION CORP., a Delaware corporation

By:_____
Name:
Title:

JACK O. PLEITER AS STOCKHOLDERS' AGENT

_____
Jack O. Pleiter